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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, PETITIONER,

vs.

HOOSIER CARDINAL CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 23, 1965
CERTIORARI GRANTED OCTOBER 11, 1965

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit		
Appellant's appendix consisting of portions of the record from the United States District Court for the Southern District of Indiana, Evansville Division	1	1
Docket entries	1	1
Complaint	3	3
Exhibit A—Excerpt from Collective Bargaining Contract—Article VIII—Vacations	5	5
Defendant's motion to dismiss plaintiff's complaint	8	8
Affidavit of T. J. Morton, Jr. in support	11	11
Opinion and order, Steckler, J.	12	12
Notice of appeal	23	24
Opinion, Schnackenberg, J.	24	24
Concurring opinion, Swygert, J.	29	29
Judgment	30	29
Clerk's certificate (omitted in printing)	31	30
Order allowing certiorari	32	30

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[fol. 1]

Appellant's Appendix—Filed February 15, 1965

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

No. EV 64-C-29

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO, Plaintiff,

v.

HOOSIER CARDINAL CORPORATION, an Indiana Corporation, Defendant.

DOCKET ENTRIES

1964

Apr. 8. Complaint filed, summons issued.

May 4. Kahn, Dees, Donovan & Kahn file appearance for the defendant; defendant filed motion to dismiss; brief in support thereof, request for oral argument and proof of service.

May 18. U. S. Marshal returns summons; served April 13, 1964.

July 27. Cause assigned for oral argument and hearing upon defendant's motion to dismiss on August 27, 1964, at 2:00 P.M. in Room 203, U. S. Courthouse, Indianapolis, Indiana; thirty minutes is allotted each side for argument (SE).

[fol. 2]

Aug. 27. Hearing held on defendant's motion to dismiss; arguments of counsel heard and Court takes matter under advisement; counsel for plaintiff allowed ten days in which to file a post-argument brief and the defendant is granted 10 days thereafter to file a post-argument answer brief. (SE)

Sept. 4. Plaintiff filed post argument brief with c/s.

Sept. 14. Defendant filed reply brief in support of its motion to dismiss complaint with p/s.

Nov. 12. Court overrules defendant's motion to dismiss as to the first ground thereof, that there is no federal jurisdiction over the subject matter of the action, but sustains said defendant's motion to dismiss complaint on the second ground of said motion; ordered, adjudged and decreed that plaintiff's complaint be dismissed on the ground that the complaint fails to state a claim against the defendant upon which relief can be granted; costs taxed against the plaintiff. (SE) O.B. Vol. IV, page 86.

Nov. 25. Plaintiff filed notice of appeal, with c/s; copy mailed to Kahn, Dees, Donovan & Kahn, 905 So. Securities Building, Evansville, Indiana.

Dec. 3. Plaintiff filed appeal bond in the sum of $250.00 with the Reliance Insurance Company as surety thereon.

Dec. 22. Court Reporter files original and copy of transcript of oral argument heard on August 27, 1964.

Dec. 30. Transcript on appeal and transcript of oral argument heard on August 27, 1964, mailed to Clerk U. S. Court of Appeals, Chicago, Illinois.

Dec. 31. Clerk U. S. Court of Appeals, acknowledges receipt of transcripts.

[fol. 3]

IN UNITED STATES DISTRICT COURT

COMPLAINT—Filed April 8, 1964

Plaintiff, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW-AFL-CIO, an unincorporated labor organization shows unto the Court as follows:

1. The plaintiff is an unincorporated labor organization having its principal office in Detroit, Michigan and exercising the usual functions of a labor organization throughout the United States and Canada and specifically having local unions chartered by the International Union, in the State of Indiana in the Southern District of Indiana and such International Union represents employees of industries affecting commerce.

2. The defendant, Hoosier Cardinal Corporation is a corporation organized and existing under the laws of the State of Indiana and having a resident agent within the jurisdiction of the Evansville Division of the United States District Court for the Southern District of Indiana and such corporation is engaged in an industry affecting commerce.

3. This action is brought by the plaintiff under the provisions of Section 301 of the Labor Management Relations Act, 1947, as amended, Title 29 U.S.C., Section 185 et seq. Jurisdiction of this cause is vested in this Court by virtue of said Act of Congress.

4. That on or about the 1st day of September 1955, the plaintiff and its Local Union No. 145 entered into a collective bargaining contract with the defendant corporation, a copy of which contract is filed herewith, incorporated herein and is marked Plaintiff's Exhibit "A."

5. Article VIII of said agreement provides in part: "Vacation pay shall be granted on the following basis:

a. Each hourly rated employee—shall be entitled to Forty (40) hours vacation with pay;

[fol. 4]

b. Each hourly rated employee (with 3-10 years service) shall be entitled to Eighty (80) hours vacation with pay.

d. Each hourly rated employee (who has more than Ten years service) shall be entitled to One Hundred Twenty (120) hours vacation with pay."

The aforesaid article further provides that all employees who have either worked at least 1000 hours during the preceding twelve months or who have certain seniority rights as described in Article VIII shall be guaranteed vacation pay; that said vacation pay is to be based on the average wages of each employee during the preceding twelve months.

6. That following the 1st day of January, 1957 and prior to the 1st day of June, 1957, certain employees of the defendant corporation, all of whom were represented for the purposes of collective bargaining by the plaintiff, earned vacation pay according to the aforesaid Article VIII of the collective bargaining agreement and the names of such employees together with the amounts earned are all shown in plaintiff's Exhibit "B" which is now filed and made a part of this complaint.

7. That on or about the 1st day of June, 1957, the defendant corporation discontinued employment of the employees whose names are set out in the aforesaid Exhibit "B" and has since said date refused to pay such employees any of the accumulated vacation pay which is now due and owing.

8. The plaintiff has demanded payment of such vacation wage pay but the defendant has consistently refused to make such payments.

9. That the plaintiff does not have possession of the pay records of the employees of the defendant but such records are in the possession of the defendant and that this plaintiff has no access to said records. The plaintiff

further says that the records will show the defendant indebted in the amounts exceeding Forty Thousand Dollars ($40,000.00) owing to employees represented by the plaintiff.

[fol. 5] 10. That pursuant to the Acts of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof and in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due to the employees represented by the plaintiff an amount equal to double unpaid wages which amount is in excess of Eighty Thousand Dollars ($80,000.00).

Wherefore, the plaintiff asks judgment against the defendant corporation in the amount of Forty Thousand Dollars ($40,000.00) together with liquidated damages in the amount of Eighty Thousand Dollars ($80,000.00) together with a reasonable fee for plaintiff's attorney together with its costs and prays that the plaintiff may have such further relief as to the Court seems just.

Lynnville G. Miles, Attorney for Plaintiff, 605 Union Title Building, Indianapolis, Indiana.

EXHIBIT A TO COMPLAINT

(The entire collective bargaining contract, filed as Exhibit A to the Complaint, is in the record. Printed here is the pertinent paragraph of the Agreement, Article VIII.)

Article VIII

Vacations

36. Vacations shall be granted on the following basis:

a. Each hourly rated employee, regardless of length of service, who has worked a total of 1000 hours or more during the preceding twelve (12) month period as defined in paragraph 38-b, shall be entitled to forty (40) hours vacation with pay.

b. Each hourly rated employee who has one (1) year but less than three (3) years' seniority on his seniority anniversary date of the current vacation [fol. 6] year, and who has been in receipt of earnings in at least fifty (50%) percent of the Company's pay periods or worked a total of 1000 hours or more during the preceding twelve (12) month period as defined in paragraph 38-b, shall be entitled to forty (40) hours vacation with pay.

c. Each hourly rated employee who has three (3) years but less than ten (10) years seniority on his seniority anniversary date of the current vacation year, and who has been in receipt of earnings in at least fifty (50%) percent of the Company's pay periods or worked a total of 1000 hours or more during the preceding twelve (12) month period as defined in paragraph 38-b, shall be entitled to eighty (80) hours vacation with pay.

d. Each hourly rated employee who has ten (10) years or more seniority on his seniority anniversary date of the current vacation year and who has been in receipt of earnings in at least fifty (50%) percent of the Company's pay periods or worked a total of 1000 hours or more during the preceding twelve (12) month period as defined in paragraph 38-b, shall be entitled to one hundred and twenty (120) hours vacation with pay.

37. The full amount of vacation pay to which each employee is entitled shall be paid the employee on the last regular pay day preceding his vacation period.

38. a. Each hour of vacation pay shall be computed on the basis of an employee's average earnings during the preceding year.

b. Vacation time and pay shall be computed from the identical period for which the W-2 forms are calculated.

39. Employees who are laid off during the vacation periods and are entitled to a vacation with pay may receive their vacation check at the time they are laid off.

40. Employees who qualified for a vacation in the previous year and whose employment is terminated for any [fol. 7] reason before the vacation is taken will be paid that vacation at time of termination. In case of death any unpaid vacation money will be paid to the widow or family of the deceased employee. In case such eligible employee quits, he must give the Company two (2) days written notice in order to receive such vacation pay.

41. The amount of vacation to which an employee is eligible shall be determined at the time of his layoff or termination. If an employee on such layoff is recalled to work during the vacation year and during such layoff his anniversary date occurs, he may be eligible for additional vacation time.

42. Employees entitled to vacations with pay cannot waive vacations and add vacation time and pay to the following year's vacation.

43. a. The vacation period shall begin January 1st and end on December 31st of each year during the term of this Agreement. Vacations must be taken during this period and are subject to the approval of the employee's supervisor, with due consideration of the employee's wishes and the most efficient operation of the plant.

b. A two week vacation period by the Cardinal and the Hoosier Divisions either singly, separately or jointly may be scheduled during the summer months provided at least sixty (60) days prior notice is given of such date.

c. Employees may be allowed to begin their vacation on any day of the week.

EXHIBIT B TO COMPLAINT

(Exhibit B to Complaint, the list of employees discharged, is in the record on file with the Court. As it is not pertinent to the matters before the Court, it is not reprinted here.)

[fol. 8]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT —Filed May 4, 1964

The defendant, Hoosier Cardinal Corporation, respectfully moves the Court to dismiss the above entitled cause of action for the following reasons, and each of them, to-wit:

1. The complaint herein shows no federal jurisdiction over the subject matter of the action by reason of the following:

(a) Section 301 of the Labor Management Relations Act of 1947, as amended, Title 29 U.S.C. Section 185, confers no jurisdiction upon this Court, or federal courts, to entertain this action by said plaintiff labor union for and on behalf of its individual members to enforce the alleged rights of the individual former employees of the defendant based upon the defendant's alleged failure to comply with the terms of the collective bargaining agreement relating to compensation, all of which appears on the face of the complaint filed in this cause.

(b) The complaint on its face shows that the real parties in interest are the individual former employees of the defendant mentioned in the plaintiff's complaint and that the plaintiff labor union is seeking to enforce uniquely personal rights of the individual former em-

ployees, namely for vacation pay alleged to be due each individual former employee from the defendant company, and that the plaintiff union is not claiming any pecuniary interest in the vacation pay alleged to be due to the individual former employees of the defendant, nor is the plaintiff union seeking to recover from the defendant any other damages or to enforce any other rights as to which it, as such, has any interest or alleged claim whatsoever.

[fol. 9] (c) It appears upon the face of the complaint that the plaintiff labor union is an unincorporated association and under the law of the State of Indiana such unincorporated association has no capacity to bring an action as a party plaintiff.

(d) It appears upon the face of the complaint that the plaintiff union has not, as such, suffered any alleged damages and is not, as such, seeking damages against the defendant herein and, therefore, the matter in controversy between the plaintiff and the defendant does not exceed, exclusive of interest and costs, the sum of $10,000.00 as required by Title 28 U.S.C. Section 1332, as amended.

2. The complaint fails to state a claim against the defendant upon which relief can be granted for the following reasons:

The complaint shows on its face that the plaintiff union is seeking to recover vacation pay on behalf of certain individuals who are former employees of the defendant, a list of which former employees is attached to the complaint as Exhibit B. It also is seeking to recover double damages for said employees and attorney fees. It is alleged that the vacation pay was earned according to a collective bargaining agreement entered into between the plaintiff and its Local Union No. 145 and the defendant on or about September 1, 1955, a copy of which agreement is attached to plaintiff's complaint as Exhibit A. The complaint on its face shows that what the plaintiff is, in effect,

trying to do is to recover vacation pay on each individual former employee's separate cause of action under said employee's oral employment contract with the defendant, as shown by the affidavit hereinafter referred to.

The complaint shows on its face that the breach, if any, on the part of the defendant occurred on or about the 1st day of June, 1957 when the defendant corporation discontinued employment of all the former employees named in Exhibit B and since said date has refused to pay any such employees accumulated vacation pay.

[fol. 10] The complaint, therefore, shows that the alleged causes of action of the individual former employees which the plaintiff is seeking to enforce arose more than six years prior to the commencement of this action and that the claim for vacation pay would be a breach of the oral employment contract of each employee and is, therefore, barred by the statute of limitations of the State of Indiana by Burns' Indiana Statutes, 1946 Replacement, Section 2-601 (Supp.). This statute provides no action shall be brought on a contract not in writing after six years.

In support of this motion the defendant will rely upon the affidavit of T. J. Morton, Jr. that the employment contract with each former individual employee of the defendant mentioned in Exhibit B attached to the complaint herein was an oral or verbal employment contract and none of said former employees had a written contract with the defendant. Said affidavit is attached hereto, made a part of this motion and marked "Exhibit No. 1".

Kahn, Dees, Donovan & Kahn, Attorneys for Defendant, 905 Southern Securities Building, Evansville, Indiana 47708.

May 4, 1964.

[fol. 11]

AFFIDAVIT OF T. J. MORTON, JR., IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

State of Indiana,
County of Vanderburgh—ss.

T. J. Morton, Jr., being first duly sworn upon his oath deposes and says:

1. That he is now and was at all times mentioned in the plaintiff's complaint filed in the above entitled cause of action and since about the year 1928 has been continuously the president of the defendant, Hoosier Cardinal Corporation, an Indiana corporation with its principal office in the City of Evansville, Indiana, or its predecessor, Hoosier Lamp & Stamping Corporation; that he has personal knowledge of the facts herein set forth and makes this affidavit in support of the attached and foregoing motion of said defendant, Hoosier Cardinal Corporation, to dismiss plaintiff's complaint and cause of action filed herein.

2. That all of the former employees of the defendant whose names appear on Exhibit B attached to plaintiff's complaint and for whom the plaintiff herein is seeking to recover vacation wages, were originally and at all times from the date of their employment continuously employed by the said defendant under verbal or oral contracts of employment and that none of said former employees at any time prior to their discharge by the defendant herein on or about June 1, 1957 were ever employed under any written employment contract with the defendant.

More affiant saith not.

T. J. Morton, Jr.

Subscribed and sworn to before me, the undersigned Notary Public in and for said county and state, this 1st day of May, 1964.

....., Notary Public, Vanderburgh County, Indiana.

My commission expires .....

[fol. 12]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF INDIANA

EVANSVILLE, INDIANA

OPINION AND ORDER—Filed November 12, 1964

This cause comes on before the Court on the motion of the defendant, Hoosier Cardinal Corporation, to dismiss the above entitled cause of action on two grounds:

The first ground is that the complaint herein shows on its face that there is no federal jurisdiction over the subject matter of the action.

In support of this part of its motion, the defendant claims that Section 301 of the Labor Management Relations Act of 1947, as amended, Title 29 U.S.C. Section 185, confers no jurisdiction upon this Court, or federal courts generally, to entertain an action brought by the plaintiff labor union for and on behalf of certain of its individual members to enforce such individual member's personal rights or action for alleged vacation pay claimed to be due by reason of the collective bargaining agreement between the plaintiff union and the defendant company; that the Court does not have jurisdiction because the plaintiff labor union is an unincorporated labor association and as such has no capacity under Indiana law to bring an action as a party plaintiff, and that the complaint shows on its face that the plaintiff union has not suffered any damages, as such, and that the matter in controversy does not exceed, exclusive of interest and costs, the sum of $10,000.00, as required by Title 28 U.S.C. Section 1332, as amended.

The second ground of defendant's motion to dismiss is that the complaint fails to state a claim against the defendant upon which relief can be granted.

In support of this ground of its motion the defendant asserts that the complaint shows on its face that the plaintiff union is seeking to recover vacation pay on behalf of and for certain individuals who are former employees of the defendant. A list of such former employees is at-

tached to the complaint as Exhibit B. It also seeks to recover on behalf of said employees double damages and [fol. 13] attorney fees. The alleged vacation pay is alleged to have been earned according to a collective bargaining agreement entered into between the defendant and plaintiff's Local Union No. 145 on or about September 1, 1955, a copy of which agreement is attached to plaintiff's complaint as Exhibit A. The motion to dismiss is supported by the affidavit of an official of the defendant which shows that each individual former employee was employed by the defendant under an oral employment contract. This action, therefore, is an attempt by the union to recover on behalf of certain individuals alleged vacation pay on each said individual former employee's alleged separate cause of action under each employee's oral employment contract with the defendant. The defendant further alleges that the complaint on its face shows that the breach, if any, on the part of the defendant of the verbal employment contracts with the individual former employees occurred on or about the 1st day of June, 1957 when the defendant corporation discontinued employment of all of the former employees named in the complaint and since said date has refused to pay any such employee alleged accumulated vacation pay. Finally, the defendant, in support of its motion to dismiss under this part, states that the complaint shows that the alleged cause of action of the individual former employees which the plaintiff is seeking to enforce on their behalf arose more than six years prior to the commencement of this action. Further, that such claims for alleged vacation pay would result from an alleged breach of an oral employment contract of each employee and would, therefore, be barred by the statute of limitations of the State of Indiana. *Burns Indiana Statutes, 1946 Replacement, Section 2-601 (Supp.),* which provides that no action shall be brought on a contract not in writing after six years. The plaintiff's complaint in this case was filed on April 8, 1964, which would be more than six years from June 1, 1957, when the alleged breach, if any, of employment contract with the individual employees occurred.

As noted above, the defendant filed the affidavit of the president of the defendant corporation in support of its motion to dismiss, in which it is stated that each individual [fol. 14] former employee was originally and at all times since the date of employment continuously employed by the defendant solely under an oral or verbal employment contract, and that none of said employees prior to their discharge on June 1, 1957 was ever employed under any written employment contract. Rule 12 of the Federal Rules of Civil Procedure provides that a motion to dismiss supported by matters outside the pleading, if not excluded by the Court, shall be treated as a motion for summary judgment. In this case the same results would obtain whether the motion was considered as a motion to dismiss or as a motion for summary judgment because this cause can be, and is, disposed of without the necessity of the affidavit in support of said motion to dismiss and on matters appearing on the face of the complaint unsupported thereby. Further, this cause was fully briefed by both plaintiff and defendant and oral argument and hearing thereon was held before the Court after due notice to both parties and no counter-affidavits to said motion were filed by the plaintiff herein.

And the Court having examined the plaintiff's complaint, defendants' motion to dismiss, the briefs in support thereof and in opposition thereto, and having taken the matter under advisement, and now being duly advised in the premises overrules said defendant's motion to dismiss as to the first ground thereof, that there is no federal jurisdiction over the subject matter of the action, but now sustains said defendant's motion to dismiss said complaint on the second ground of said motion, namely, that the complaint fails to state a claim against the defendant upon which relief can be granted.

If the defendant's motion, by reason of the affidavit attached, is considered a motion for summary judgment of the defendant as to the second ground of said motion to dismiss then in the alternative such motion for summary judgment is hereby sustained.

The Court in reaching its decision herein in the disposition of defendant's motion to dismiss has given serious consideration to the briefs and arguments of the parties. [fol. 15] The defendant in support of the first ground of its motion to dismiss, that the complaint shows no federal jurisdiction over the subject matter of the action, argues that Section 301 of the Labor Management Relations Act of 1947, as amended, Title 29 U.S.C. Section 185, confers no jurisdiction on this or any other federal court to entertain this action by the plaintiff labor union for and on behalf of its individual members to enforce the alleged uniquely personal rights of the individual former employees of the defendant to recover alleged vacation pay, inasmuch as these rights flow directly to the former individual employees under their individual verbal employment contracts with the defendant and did not flow to or inure to the benefit of the plaintiff union. The defendant argues that the complaint shows on its face that the vacation pay sought to be recovered is a uniquely personal right of the defendant's former individual employees and that this brings this case squarely within the decision and authority of *Local Lodge 2040, International Association of Machinists* v. *Servel, Inc.*, (1959), 7 Cir., 268 F. 2d 692, and in the holding of the Supreme Court of the United States in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, (1954), 348 U.S. 437, 75 S. Ct. 489. The facts in the Servel case were almost identical with the facts in this case, in which the Court held that a labor union seeking to recover alleged vacation pay for former employees of Servel, Inc. and not seeking to recover anything upon behalf of itself, could not recover on the uniquely personal rights of the former employees and that Section 301 of the Labor Management Relations Act of 1947, as amended, did not confer federal jurisdiction on the district court to entertain the action by the plaintiff union for recovery of alleged vacation pay of its individual members. The Servel case was based upon the Supreme Court's decision in the Westinghouse case cited above, which also held that the federal court did not have

jurisdiction in an action by a labor union to enforce uniquely personal rights of the individual employees which it represented and that such action belonged to the individuals and not the union.

[fol. 16] The defendant in its brief, although admitting that the Westinghouse case and perhaps the Servel case had been questioned by the Supreme Court of the United States in the case of *Smith* v. *Evening News Association,* (1962), 371 U.S. 195, 83 S. Ct. 267, nevertheless argued that these cases were not overruled by the Supreme Court in its decision and that anything which the Court may have stated in the Smith case with reference to the Servel or Westinghouse cases was purely dicta; also, that these cases were not necessarily overruled and that as to the particular question involved here the Servel and Westinghouse cases were determinative of this question.

The plaintiff on the other hand maintains that Smith v. Evening News Association expressly overruled Westinghouse and that under the Smith case this action can be maintained by the plaintiff union even though it is brought to recover vacation pay, which would be uniquely personal claims of the individual employees.

In the Smith case the petitioner individually, and as assignee of certain other employees who were members of a labor organization having a collective bargaining contract with the defendant newspaper publisher, brought suit in the Circuit Court of Wayne County, Michigan, to recover certain wage claims for the petitioner and other employees, charging that during a strike certain non-union employees were paid full wages even though there was no work available, while refusing to pay wages to the union members, in violation of a clause in the collective bargaining agreement providing there should be no discrimination against any employee because of his membership or activities in the union.

The case was dismissed by the Wayne Circuit Court on the grounds that the allegations, if true, would make out an unfair labor practice under the National Labor Relations Act and hence the matter was within the jurisdiction

of the National Labor Relations Board. The Michigan Supreme Court affirmed this decision and certiorari was granted by the Supreme Court of the United States. The Supreme Court held that the authority of the National La- [fol. 17] bor Relations Board to deal with an unfair labor practice which also violates a collective bargaining agreement was not displaced by Section 301 of the Labor Management Relations Act of 1947, as amended, nor does it destroy the jurisdiction of the courts in suits brought under that section. It was then urged that a suit by an employee to collect wages in the form of damages is not among those suits in violation of contracts between the employer and a labor organization as provided in Section 301 and that, therefore, the court would not have jurisdiction to enforce these rights because they would be considered uniquely personal rights arising from the separate hiring contracts between the employer and each employee. The Supreme Court held, however, that the underpinnings of Westinghouse and its holding was no longer authoritative that uniquely personal employee rights could not be recovered under Section 301 and held that the individual employees could maintain an action under Section 301 to enforce these personal rights where they were founded in part on a collective bargaining agreement. It seems to the Court here that although the Smith decision did not go so far as to hold that a union could enforce these personal rights for an employee under Section 301, by holding that the individual employees could enforce such rights under Section 301 the Supreme Court would have little hesitancy in holding that in a proper case a labor union itself could enforce the personal rights of a wage claim of the individual employee under Section 301. In view of the language used in the Smith case on this subject the Court is constrained to hold that the plaintiff union in this case could maintain this action on behalf of the individual former employees of the defendant to recover their alleged individual wage claims under Section 301 of the Labor Management Relations Act of 1947, as amended, and that, therefore, this Court does have jurisdiction of the subject matter of this cause. For this rea-

son, that part of defendant's motion to dismiss the complaint herein is overruled.

With references to the second part of the defendant's motion to dismiss, or motion for summary judgment if it be so considered, on the ground that the complaint shows on its face that the causes of action sought to be enforced herein are barred by the Indiana statute of limitations is well taken and this part of defendant's motion must be sustained.

[fol. 18] It is well settled that the collective bargaining agreement between a union and an employer does not create a contract of employment with the individual employees. As was stated by the Supreme Court in the case of *J. I. Case Co.* v. *National Labor Relations Board,* (1944), 312 U. S. 332, 64 S. Ct. 576, at page 579, no individual employee has a job by reason of the collective bargaining agreement and no obligation to any individual comes into existence from such collective bargaining agreement. After a collective bargaining agreement is made the individuals who will benefit by it are identified by individual hirings. In other words, the right of the individual to vacation pay or other wages from an employer arises from his employment contract with the employer and not by virtue of the collective bargaining agreement. This rule was also expressed in *Kosley* v. *Goldblatt Bros.,* (1958) Cir. 7, 251 F. 2d 558, where the court at page 560 said:

> "An employee has always had a right to bring suit in a court to recover wages claimed to be owing him from his employer. As the court said in Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437, 460, 75 S. Ct. 489, 500, 99 L. Ed. 510: 'The employees have always been able to enforce their individual rights in the state courts.' Such an action is based upon a hiring contract between the employer and the employee. While the contract between the employees' union and the employer may determine the rate of wages of the employee, the latter's right of action is not superseded by the employer-union agreement. An employee may enforce his claim

for back wages by suing in a state court, or in a federal court where there is present diversity of citizenship and the required amount is involved."

Thus it is clear and it is shown on the face of the complaint, disregarding the affidavit filed in support of defendant's motion to dismiss, that the individual employment contracts of the defendant's former employees, for which the plaintiff union seeks to recover vacation pay, were employment contracts which were partly oral and [fol. 19] partly in writing, the oral part being the employment itself and the written part being the reference to the collective bargaining agreement between the plaintiff union and defendant which determined the rates of pay and the alleged vacation rights. Under these circumstances it is the Court's opinion that *Burns Indiana Statutes, 1946 Replacement,* Section 2-601 (Supp.) which provides that no action may be commenced on a contract not in writing after six years from the date the cause of action arose would apply in this case inasmuch as the complaint on its face shows the causes of action of the individual former employees of the defendant arose on the 1st day of June, 1957, when the defendant dismissed all of said former employees, and that this action was not brought until April 8, 1964, more than six years thereafter.

We feel that two cases decided by the Court of Appeals for the Seventh Circuit are quite determinative of the action in this case and, under the decisions, that the individual employee's claims for vacation pay herein have been barred by the Indiana statute of limitations. In the case of *Kordewick* v. *Indiana Harbor Belt R. Co.* (CCA 7) 157 F. 2d 753, cert. den. 67 S. Ct. 502, the court in discussing the Illinois statute of limitations on contracts which were partially written and partially verbal held that the statute barring parol contracts applied. In this case individual employees brought an action against the employer alleging a breach of a written union contract between the employer and the union. The court at pages 754 and 755 discussed the effect of the contract and found that it was

a contract partially oral and partially in writing and, therefore, was considered an oral contract so as to be barred by the statute of limitations governing parol contracts, and said:

> "Many years ago the Supreme Court of Illinois said: 'A contract cannot be said to be in writing unless the parties thereto, * * * can be ascertained from the instrument itself. If the party to a written contract is not named therein, * * * the agreement is only partly reduced to writing, because parol proof must be resorted to in order to show with whom the bargain was [fol. 20] made.' The Railway Passenger & Conductors Benefit Ass'n v. Loomis, 142 Ill. 560, 567, 32 N.E. 424, 426. And in Mowatt v. City of Chicago, 292 Ill. 578, 582, 127 N.E. 176, 177, the court, after saying 'that a written contract is one in which all of its terms are in writing; that a contract partly in writing and partly oral is in legal effect an oral contract,' held that if parol evidence must be introduced to sustain the action the contract is not in writing under Sec. 17 of the Statute of Limitations. See also Novosk v. Reznick, 323 Ill. App. 544, 551, 56 N.E. 2d 318, and Orminski v. Hyland Electrical Supply Co., 326 Ill. App. 392, 62 N.E. 2d 14; Economy Fuse & Mfg. Co. v. Raymond Concrete Pile Co., 7 Cir., 111 F. 2d 875, cited by plaintiffs, is not opposite.
>
> "As we have observed, the contract upon which plaintiffs rely was entered into between the General Managers Committee and the Brotherhood of Railroad Trainmen. The complaint was filed on November 9, 1945. The claimed violations began August 13, 1926, and ended on December 12, 1938. Plaintiffs are not named in the contract and parol evidence would be necessary, therefore to show the existence of any contractual relationship between plaintiffs and defendant, and to show that plaintiffs are or were at any time employed by defendant, and if plaintiffs had been employed by defendant, parol evidence would be necessary to show that plaintiffs had been employed in

the type of work covered by the agreement between the Brotherhood and the Committee. Under these circumstances, we must hold that the contract upon which recovery was sought was an unwritten contract."

A later Court of Appeals for the Seventh Circuit case, *Albrecht* v. *Indiana Harbor Belt R. Co.* (1949), 178 F. 2d 577, cert. den. 70 S. Ct. 804, involved the same union contract involved in the Kordewick case, except that in the latter case the Indiana six year statute of limitations was involved, because although the contract was made in Illinois the action was instituted in federal court in Indiana [fol. 21] and the court held that in such a case the statute of limitations of the state in which the suit was brought would control. The court pointed out that on a suit on a union contract by an individual employee such employment contract is partially oral and partially in writing and is regarded as an oral contract, and that the Indiana six year statute of limitations would apply.

Indiana has clearly held that in a case where a contract is partially in writing and partially oral the six year statute of limitations applies as it is an action on an oral contract and not one in writing. For one of the leading cases on this subject in Indiana and frequently cited see *The Board of Commissioners of Marion County* v. *Shipley*, 77 Ind. 553. In this case the county issued a written authorization for the payment of a bounty to anyone volunteering for military service. The plaintiff brought an action against the county, suing on the written contract. However, the court held that the six year statute applied because the contract was partially oral and partially in writing. At page 555 the court said:

"A contract can not be said to be in writing within the meaning of section 211, above noticed, so as to run twenty years, unless the parties thereto, as well as its entire terms and stipulations, can be gathered from the instrument itself, or from some other written instrument referred to therein, without the aid of parol evidence to ascertain either. If parol evidence has to

> be resorted to in order to ascertain the parties to a contract or its terms, the reason for extending the period of limitation to twenty years fails; and, though the contract may be partly in writing, yet, as it rests partly in parol, the six-year period of limitations applies as well as if the contract had rested entirely in parol."

This case was cited with approval and reaffirmed in *Carskaddon* v. *City of South Bend,* 141 Ind. 596, 39 N. E. 667, where at page 668 of the Supreme Court Reporter it ap- [fol. 22] proved The Board of Commissioners of Marion County v. Shipley and cited several other Indiana cases holding to the same effect. See also *19 I.L.E., Limitation of Actions,* Sec. 22, p. 17.

The mere fact that the union is bringing this action instead of the individual employees involved does not change the rule that the statute of limitations has barred this action.

It is the cause of action which is barred by the statute of limitations and not the particular person bringing the action. The cause of action here is the individual employee's claims for vacation pay and it is such claims that have been barred. These employees are the real parties in interest, as shown by the complaint herein, and the mere fact that the plaintiff union seeks to recover vacation pay on behalf of these individual employees does not change the fact that it is the individual employee's cause of action for vacation pay which is sought to be enforced and which is now barred by the statute of limitations.

19 I.L.E., Limitation of Actions, Section 8, page 11, points out that it is the cause of action that is barred regardless of who attempts to bring the action. This rule is stated as follows:

> "Limitations ordinarily run against the right of action and not the holder thereof, and, where a claim of a decedent is barred by limitations, the claim of his heirs based solely on the rights acquired from the decedent is also barred. A claim of debt, which would be

barred if made by the original creditor or claimant, will likewise be barred in the hands of a third person."

In support of this rule see the following cases:

Kennedy v. Warnica, 1894, 36 N.E. 22, 136 Ind. 161;

Hildebrand v. Kinney, 1909, 87 N.E. 832, 172 Ind. 447;

O'Connell v. Chicago Park District, 1941, 34 N.E. 2d 836, 376 Ill. 550.

[fol. 23] The individual former employees of the defendant for whose benefit this action for vacation pay alleged to be due is brought cannot circumvent the statute of limitations, which has clearly run on their claims, by having the union bring the action in their behalf, because the cause of action itself is now barred.

The Court having reached the above conclusions,

It Is, Therefore, Ordered, Adjudged and Decreed that plaintiff's complaint herein be and the same is hereby dismissed on the ground that the complaint fails to state a claim against the defendant upon which relief can be granted, for the reason that the complaint shows on its face that the causes of action upon which recovery is sought on behalf of the individual former employees of the defendant were barred by the statute of limitations of the State of Indiana, *Burns Indiana Statutes, 1946 Replacement,* Section 2-601, (Supp.), at the time this action was commenced, and that the costs of this action be taxed against the plaintiff.

William E. Steckler, Judge.

In United States District Court

Notice of Appeal—Filed November 25, 1964

Notice is hereby given that International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW-AFL-CIO, the above-named plaintiff, does hereby appeal to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this action on 12 November, 1964 in favor of Hoosier Cardinal Corporation, Appellee.

Plaintiff-Appellant prays that this Court enter its order fixing bond for costs on said appeal pursuant to Rule 73-C.

Miles & Cummings, 605 Union Title Building, Indianapolis, Indiana, Attorneys for United Automotive Workers, 8000 East Jefferson Avenue, Detroit, Michigan.

[fol. 24]

In the United States Court of Appeals

For the Seventh Circuit

No. 14945 September Term, 1964—April Session, 1965

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, Plaintiff-Appellant,

v.

Hoosier Cardinal Corporation, an Indiana corporation, Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division.

Opinion—June 4, 1965

Before Schnackenberg, Knoch and Swygert, Circuit Judges.

Schnackenberg, Circuit Judge. International Union, United Automobile, Aerospace and Agricultural Implement

Workers of America (UAW), AFL-CIO, plaintiff, appeals from a judgment of the district court dismissing plaintiff's complaint because it showed on its face that the causes of action upon which recovery was sought were barred by the statute of limitations of the state of Indiana.

The complaint avers that plaintiff, hereinafter sometimes referred to as the Union, having a collective bargaining agreement wtih Hoosier Cardinal Corporation, an Indiana corporation, defendant, which required vacation [fol. 25] pay for its employees, by this action seeks to rely upon various statutes of the state of Indiana, (a) providing for the payment of wages due to employees at least weekly, Burns Ind. Stat. Ann. (1952 Repl.) § 40-104, (b) making an employer who fails for 10 days after demand to make payment therefor weekly liable for the same together with penalty and reasonable attorneys' fees, to be recovered in a civil action, Burns Ind. Stat. Ann. (1952 Repl.) § 40-105, and (c) providing liquidated damages for such failure to pay, for each day, 10% of the amount due twice each month, not exceeding double the amount of wages due, and a reasonable fee for plaintiff's attorney, as provided in Burns Ind. Stat. Ann. (1952 Repl.) § 40-102.

It is significant that in this case no recovery is sought for or on behalf of plaintiff union itself. Any recovery in this case would inure to the exclusive benefit of the individual employee in varying amounts depending upon the individual's employment contract with defendant.

The district court relied on Burns Ind. Stat. Ann. (1946 Repl.) § 2-601 (Supp.), which provides a six-year statute of limitations on accounts and contracts not in writing.

The district court noted that the complaint herein was filed on April 8, 1964, which was more than six years from June 1, 1957 when the alleged breach of employment with individual employees occurred.

We agree with and affirm the holding and judgment of the district court. Before arriving at this conclusion we have considered each of the two reasons advanced by plaintiff which seeks to demonstrate that the district court erred.

First, plaintiff contends that no state statute of limitations can bar an action under section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185. It arrives at this conclusion by reasoning that

> "* * * it is a firm, well-established, and judicially recognized policy of Congress that insofar as concerns the application of legal principles, the resolution of labor questions under federal law should not depend in any manner upon the geographic location in which such an action arises. While the fostering of uniformity [fol. 26] in this area normally concerns substantive legal issues, procedural rules which may be dispositive of a dispute (such as the question here involved of the application of a state statute of limitations) are no less significant. The decision of the court below to impose local time limitations on a Section 301 action disturbs the national design of having a federal labor law uniformly applied. * * *"

However it should be noted that § 185 (a) deals with "suits for violation of contracts between an employer and a labor organization representing employees in an industry * * *". The case at bar is not a suit by plaintiff to recover wages due it from defendant, for the simple reason that no one contends that defendant owes any wages to the Union. Therefore we perceive that plaintiff is in error in characterizing the subject matter of this case as the resolution of a labor question. Moreover, § 185 (b) authorizes a labor organization to sue "in behalf of the employees whom it represents in the courts of the United States". There is before us actually a case by an agent to enforce the rights of individual workmen to collect from defendant vacation pay, which it is claimed was due them individually under Indiana law and for which it is clear that they individually could have brought their own suits in the state courts of Indiana. The present suit frankly characterizes the choses in action involved as existing by virtue of the statutory law of Indiana. The question of whether vacation pay is due the workmen here involved

is a question of state law. It remains a question of state law even though the terms of a bargaining agreement authorize the workmen's personal rights of action to be maintained for them by their union. The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action. Therefore it is subject to the Indiana statute of limitations.

This result is in accordance with our prior holding in *Kordewick* v. *Indiana Harbor Belt R. Co.*, 7 Cir., 157 F.2d 753 (1946), cert. den. 329 U. S. 806, where we found that such a contract was oral and thus barred by the Illinois statute of limitations.

[fol. 27] To the same effect, and involving the Indiana statute of limitations, is *Albrecht* v. *Indiana Harbor Belt R. Co.*, 7 Cir., 178 F.2d 577 (1949), where at 578, we said:

> "Although the case at bar was commenced in the District Court of Indiana, the contract nevertheless is to be interpreted under Illinois law. It must still be regarded as an oral contract. However, we must here apply the applicable Indiana statute of limitations. Guaranty Trust Co. v. York, 326 U.S. 99, 65 S. Ct. 1464, 89 L. Ed. 2079, 160 A.L.R. 1231. Federal Courts are required to give such interpretations to State statutes of limitations as are given to such statutes by the highest court of such States. Moore v. Illinois Central Railroad Co., 312 U.S. 630, 61 S. Ct. 754, 85 L. Ed. 1089. The law of the forum determines whether the action is barred. Karvalsky v. Becker, 217 Ind. 524, 29 N.E. 2d 560, 131 A.L.R. 1074; Hobbs v. Ludlow, 199 Ind. 733, 160 N.E. 450. Burns Ind. Stats. Anno. (1933), Sec. 2-601, provide that actions on oral contracts shall be barred unless commenced within six years after the cause of action accrued.
>
> "The complaint shows on its face that the alleged violations of the contract occurred from August 13, 1926, to December 12, 1938. This action was commenced August 4, 1947. It thus affirmatively appears that this action was not commenced within the six

> years after the alleged cause of action accrued. It follows that the complaint did not state a claim upon which relief can be granted, and the complaint and action were properly dismissed."

We agree with counsel for defendant when he says in his brief that the mere fact that the Union is bringing this action instead of the individual employees involved does not change the rule that the statute of limitations has barred this action. It is the *cause of action which is barred* by the statute of limitations and *not the particular person bringing the action.* The individual former employees of the defendant for whose benefit this action for vacation pay alleged to be due is brought cannot be permitted to circumvent the statute of limitations, which has clearly barred their claims, by having the Union bring the action in their behalf.

[fol. 28] Inasmuch as the recovery sought in the case at bar is solely for the benefit of individual employees, we cannot escape the conclusion that the presence of the Union as the plaintiff cannot justify the maintenance of this action which really belongs to the individual employees, as against the defense of the Indiana statute of limitations of six years.

Secondly, we reject plaintiff's contention that, if any state statute of limitations applies, this case would be governed by Indiana's 20-year statute of limitations covering actions on written contracts. As we have indicated, plaintiff's action in the district court was based upon the contracts of employment between the individual employees and defendant. There is no evidence or contention that these employment contracts were ever reduced to writing. It was for wages due under these employment contracts that the present action was brought. The 6-year statute of limitations applied to the action. The fact that the authority of the Union to bring the action on behalf of the employees is evidenced by a written agreement is of no significance in determining what Indiana statute of limitations is applicable to the action.

We have given special attention to plaintiff's reliance upon *Smith* v. *Evening News Assn.*, 371 U.S. 195 (1962). As a result thereof, it is our opinion that the result which we now reach in the case at bar is not at variance with the views expressed in the majority opinion in *Smith*.

While defendant makes two other convincing arguments in support of its position in this court, we consider it unnecessary to discuss them, because, for the reasons already given, we deem it necessary that the judgment from which this appeal was taken be affirmed. It is so ordered.

Judgment Affirmed.

[fol. 29] SWYGERT, Circuit Judge (concurring). I concur in affirmance of judgment.

[fol. 30]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Luther M. Swygert, Circuit Judge.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, Plaintiff-Appellant,

No. 14945 vs.

HOOSIER CARDINAL CORPORATION, an Indiana corporation, Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division.

JUDGMENT—June 4, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Evansville Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

[fol. 31] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 32]

SUPREME COURT OF THE UNITED STATES

No. 387, October Term, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, Petitioner,

v.

HOOSIER CARDINAL CORPORATION.

ORDER ALLOWING CERTIORARI—October 11, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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JOHN F. DAVIS, CLE

No. 387

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3
Reason for Granting the Writ	6
An Important Federal Question Is Presented by the Lower Court's Application of the Indiana Oral Contract Statute of Limitations to a Suit Under Section 301 of the Labor-Management Relations Act.	
1. An Important Federal Question	7
2. Conflict With This Court's Rulings	9
3. The Decisional Grounds Espoused Below Violate This Court's Pronouncements and Give Rise to a Serious Constitutional Issue	13
Conclusion	16
Appendix A—Rulings Below	17
Appendix B—"State Statutes of Limitations Governing Contract Actions"	23

Citations

Association of Westinghouse Employees v. *Westinghouse Electric Corp.*, 348 U.S. 437	4, 14, 15
Burnett v. *New York Central R. Co.*, 380 U.S. 424	6, 7, 10, 11, 12
Cope v. *Anderson*, 331 U.S. 461	6
Charles Dowd Box Co. v. *Courtney*, 368 U.S. 502	9
Falsetti v. *Local 2026*, No. 15263, C.A. 3	7
Fishbach and Moore, Inc. v. *International Union of Operating Engineers*, No. 19476, C.A. 9	7
Garrett v. *Moore-McCormack Co.*, 317 U.S. 239	10
Guaranty Trust Co. v. *York*, 326 U.S. 99	10
Holmberg v. *Armbrecht*, 327 U.S. 392	6, 11, 12

Page

Johnson v. *Hoosier Cardinal Corp.*, Cause No. C. 7824, Superior Court of Vanderburgh County, Indiana 4
Leh v. *General Petroleum Corp.*, #4 Oct. Term 1965 9, 14
Local 174, Teamsters v. *Lucas Flour Co.*, 369 U.S. 95 ..... 9, 11, 13
McAllister v. *Magnolia Petroleum Co.*, 357 U.S. 221 ..... 6, 8, 10, 11
Rawlings v. *Ray*, 312 U.S. 96 6
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 11
Smith v. *Evening News Ass'n.*, 371 U.S. 195 ..... 4, 8, 10, 11, 14
Textile Workers v. *Lincoln Mills*, 353 U.S. 448 9
Tully v. *Fred Olsen Motor Service Company*, 134 N.W. 2d 393 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, International Union, UAW, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Seventh Circuit, which affirm the dismissal by the District Court for the Southern District of Indiana of petitioner's suit under Section 301 of the Labor-Management Relations Act on the ground that the Indiana statute of limitations has run.

Opinion Below

The opinion and judgment of the Court of Appeals for the Seventh Circuit, which are not yet reported, appear *infra* in Appendix A, pp. 17 to 22.

Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit, affirming the District Court's dismissal of petitioner's suit, were entered on June 4, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether, as the court below held, the differing norms of state statutes of limitations control suits for the enforcement of collective bargaining agreements under Section 301 of the Labor-Management Relations Act.

2. Whether, as the court below also held, a Section 301 suit to enforce the vacation pay provisions of a written collective bargaining agreement is, for purposes of choosing the applicable statute of limitations, to be treated as a suit resting on the oral contract of hire between the employees and the employer.

Statute Involved

Section 301 of the Labor-Management Relations Act, 61 Stat. 156, 29 U.S.C. §185, provides in part:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in con-

troversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States . . ."

Statement

On September 1, 1955 the International Union, UAW and its Local 145, collective bargaining representative for the employees of the Hoosier Cardinal Corporation of Evansville, Indiana, entered into a three year collective bargaining agreement with the company (Complaint, Exhibit "A"). Among the usual provisions common to such labor-management agreements was Article VIII governing "Vacations." That Article, providing that "vacations shall be granted on the following basis," set forth four categories of employees with differing formulas for accumulation of vacation pay. Among the provisions of the Article was a clause that "employees who qualified for vacations in the previous year and whose employment is terminated for any reason before the vacation is taken will be paid that vacation at time of termination."

On June 1, 1957, the company terminated the employment of more than one hundred workers whose employment and vacation pay were controlled by the union-company agreement of 1955; but the company did not at that time or thereafter pay to the terminated employees their accumulated vacation pay as required by Article VIII of the agreement (Complaint, Paragraph 7). Eight months after this refusal to honor the agreement, the union's attorneys on February 21, 1958 filed a class action for the employees

against the company in the Superior Court of Vanderburgh County, Indiana (*Johnson* v. *Hoosier Cardinal Corp.*, Cause No. C-7824). At that time, this Court's ruling in *Association of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, appeared to preclude a resort to the federal courts.

On January 21, 1959, the Superior Court ruled that the class action was improper under Indiana law. Thereafter, each of the former employees assigned his claim to union representative Frank Kavanaugh, who, on June 3, 1959, filed an amended complaint in the action in the nature of a representative claim for all the employees. However, on September 23, 1959, a demurrer to the amended complaint was sustained by the court on the ground that the assignment method of suit is improper under Indiana law. Thereupon, on March 18, 1960, by another amended complaint the union's attorneys reinstituted the original class action, and upon its dismissal by the court on June 3, 1960, an appeal was taken to the Appellate Court of Indiana. On April 18, 1963, that court affirmed the dismissal of the action.

Meanwhile, in *Smith* v. *Evening News Ass'n.*, 371 U.S. 195, this Court had effectively overruled its earlier *Westinghouse* limitation, and opened the door to Section 301 suits in federal court for such employee benefits under collective bargaining agreements as the vacation pay involved in this case. Accordingly, on April 8, 1964, the union filed this Section 301 action in the United States District Court for the Southern District of Indiana for the recovery of the vacation pay due the former employees of the company. The company interposed the defense of statute of limitations, urging that over six years had passed since the employee terminations had vested the vacation pay rights claimed under the contract, and pleading the Indiana Act of

1881 (Spec. Sess.) Ch. 38, Sec. 37 (2 Burns Ind. Statutes Annotated, Section 601), which provides that suits must be commenced within six years on "contracts not in writing." The company asserted that the union's suit for wages due, while nominally based upon the vacation pay provisions of the collective bargaining agreement, was actually grounded upon the individual oral hiring agreements between the employees and the company. As a suit "in effect . . . under the separate individual [oral] employment contracts of the former employees" (defendant's brief, p. 4), the company urged that the six year statute rather than the 20-year Indiana statute governing "contracts in writing" applies to this action.

On November 12, 1964, the District Court filed an opinion upholding this company contention, and dismissing the union's complaint. On appeal to the Court of Appeals for the Seventh Circuit, the union's principal argument was that Indiana statutes of limitations do not apply to and cannot bar a federal suit under Section 301. On June 4, 1965, the court below issued its opinion holding that state statutes of limitations govern the time for commencing Section 301 actions. In reaching that result, the court below holds that the suit is "actually a case by an agent [the union] to enforce the rights of individual workmen," and that "the question of whether vacation pay is due the workmen here involved is a question of state law." For these reasons the court rules that the suit is "subject to the Indiana statute of limitations" (*infra*, p. 19). It then upholds the dismissal of the suit under the six-year Indiana statute governing "contracts not in writing," on the theory that, although the vacation pay provisions of the collective bargaining agreement are in writing, the action is actually "based upon the [oral] contracts of employment between the individual employees and defendant."

There is thus presented on these facts the question whether suits on collective bargaining agreements under Section 301 of the Labor-Management Relations Act are subject to diverse state statutes of limitations and whether a Section 301 suit for vacation pay is in effect a common law action based on the individual employee contracts of hire. As we urge below, the lower court's ruling conflicts with this Court's decisions, and corrective review is required to avoid discordant diversity in the enforcement of collective bargaining agreements under the national labor law.

REASON FOR GRANTING THE WRIT

An Important Federal Question Is Presented by the Lower Court's Application of the Indiana Oral Contract Statute of Limitations to a Suit Under Section 301 of the Labor-Management Relations Act.

When Congress has set no limitations period for the assertion of a federal statutory right, this Court has sometimes looked to analogous state limitations for a federal standard. See, *e.g.*, *Cope* v. *Anderson*, 331 U.S. 461; *Rawlings* v. *Ray*, 312 U.S. 96. But this Court has *declined* to adopt the state limitations standard where to do so would interfere with federal supremacy (*Holmberg* v. *Armbrecht*, 327 U.S. 392) or with a necessary uniformity in the vindication of uniquely national rights (*McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221; *Burnett* v. *New York Central R. Co.*, 380 U.S. 424). The central question in the present case is whether in the enforcement (in this instance in a federal forum) of rights under Section 301 of the Labor-Management Relations Act, courts may apply varying state limitations periods without frustrating pertinent supremacy and uniformity goals underlying this federal statute. That is an important federal question, which

the court below has resolved in conflict with this Court's rulings both in the result arrived at and the predicates upon which the lower court reached its conclusion.

1. *An Important Federal Question.* Whether the applicable limitations periods for suits under Section 301 are to be found in the diverse state statutes of limitations is a federal question of manifest importance. A very large number of suits in federal and state courts, many of them involving substantial questions of national labor-management relations policy, are annually commenced under Section 301.[1] There is an increasing body of dispute in such litigation over the applicable statute of limitations. Only this year, the question presented in the instant case was ruled upon by the Wisconsin Supreme Court. *Tully* v. *Fred Olsen Motor Service Company,* 134 N.W. 2d 393. The same issue is pending before the Third Circuit in *Falsetti* v. *Local 2026,* No. 15263 (District Court opinion at 34 F.R.D. 461), and the related issue concerning the applicable limitations period under Section 303 of the Act is awaiting decision by the Ninth Circuit. *Fishbach and Moore, Inc.,* v. *International Union of Operating Engineers,* No. 19476 (District Court opinion at 198 F. Supp. 911).

Moreover, subjecting Section 301 litigation to the divergent norms of state limitations creates a discordant disharmony and promotes resort to forum shopping, which this Court has sought to avoid under analogous enactments.[2] See, *Burnett* v. *New York Central R. Co.,* 380

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[1] We are informed by the Administrative Office of the United States Courts that many hundreds of cases are pending in District Courts under Section 301. See also 1964 Annual Report of the Director of the Administrative Office of the United States Courts, p. 138.

[2] The unresolved status of the pending question creates a double uncertainty. Where plaintiff anticipates a holding that the state limitation applies, it will naturally search for the state with the most favorable limitations period. On the other hand, plaintiff may choose a jurisdiction

U.S. 424; *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221. The diversity here is particularly aggravated, since limitations periods for contract actions provided in the several states vary from as little as 60 days to as long as 20 years. See "State Statutes of Limitations Governing Contract Actions," *infra*, Appendix B, p. 23. And this is an area of litigation where the frequency of overlapping jurisdictions renders the possibility of forum shopping quite real. Today, collective bargaining agreements in major industries regularly transcend state borders, so that a company or union will often have a number of available jurisdictions for litigating rights under a single collective bargaining agreement.

Not only does the adoption of diverse state limitations thus promote disharmony and forum shopping, but extraordinary difficulties are also then created with respect to antiquated state labor law theories which may creep back into Section 301 through the statute of limitations loophole. For instance, after making the applicable limitations a matter of state law, the court below determined that the Indiana statute on oral rather than written contracts applies because Indiana would treat the suit as a common-law action for wages upon an oral agreement for hire rather than as collective bargaining agreement litigation. Yet that theory, whether or not consistent with Indiana law, certainly violates this Court's clear pronouncement in *Evening News*. See *infra*, p. 14. Thus, if the court below is *correct* in applying local law philosophy of labor relations for purposes of choosing the applicable

---

which has held (or he hopes will hold) that state limitations do not apply. In that case, however, it is now unclear what uniform limitations standards will apply under Section 301. In the choice between a yet undetermined federal standard and the varying and uncertain state limitations, the respective parties to Section 301 litigation now experience some embarrassment in deciding whether to urge upon the court a federal or a state limitations standard.

state limitations period, there is then created a dual and conflicting body of labor law theory under Section 301. If, on the other hand, the court below was *mistaken* in adopting antiquated Indiana labor law theory bearing upon the applicable local statute, then the adoption of local limitations under 301 creates the added dilemma that courts must discount the local law to the extent that its choice or application conflicts with federal labor law principles. In either event only confusion, conflict, and complexification can result if Section 301 is subjected to the variant norms of state limitations periods. Cf. the issue pending in *Leh* v. *General Petroleum Corp.* (certiorari granted, #4, Oct. Term, 1965) whether resort is to be had to state or federal law for limitations purposes in characterizing a cause of action under 15 U.S.C. Section 15 as penal or compensatory.

In sum, it is clear that a significant federal question of general application in national labor-management relations law is here presented. And, we submit, it is also clear that the holding below violates this Court's applicable rulings in making state limitations governing on the time for bringing suit under Section 301.

2. *Conflict with This Court's rulings.* In resorting to diverse state limitations, the lower court disregards this Court's decisions requiring uniform federal law under Section 301 and precluding disruptive application of state limitations to uniquely national rights. In *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, this Court definitely ruled that federal courts are to fashion a body of substantive federal law in implementation of the statute. Subsequently, in *Charles Dowd Box Co.* v. *Courtney,* 368 U.S. 502, the Court extended the substantive law of Section 301 to state litigation. And in *Local 174, Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95, it ruled that in 301 cases "incompatible doctrines of local law must give way to principles of fed-

eral labor law." In the latter decision which rejects the survival of "individualized local rules" in litigation of collective bargaining agreement rights, this Court emphasized (at p. 103) the underlying uniformity goal in terms applicable to the present question:

> "Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills,* requiring issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy. More important, the subject matter of § 301(a) 'is peculiarly one that calls for uniform law . . .' The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. . . ."

This Court having thus required under Section 301 what it has characterized as "a uniform body of federal substantive law" (*Smith* v. *Evening News Assn.,* 371 U.S. 195, 200), it becomes clear that the applicable statute of limitations must also be a matter of uniform law, without state-by-state differentiation. This Court has long ago ruled that statutes of limitations *so far affect substantive rights as to require that the limitations rule of the jurisdiction creating the substantive rights apply irrespective of the forum involved.* Thus, when federal courts enforce state rights, state limitations apply (*Guaranty Trust Co.* v. *York,* 326 U.S. 99), and when state courts enforce federal rights, then federal limitations apply (*Burnett* v. *New York Central R. Co.,* 380 U.S. 424; *McAllister* v. *Magnolia Petroleum Co.,* 357 U.S. 221; *cf. Garrett* v. *Moore-McCormack Co.,* 317 U.S. 239). It is thus clear that the statute of limitations applicable to a Section 301 action *is itself a question of federal rather than state law.*

It follows that the requirement of uniformity emphasized in *Lucas Flour* and *Evening News* precludes the adoption of differing state limitations periods for Section 301 litigation. Cf. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650. True, this Court has as a matter of policy frequently applied analogous state limitations to federal actions when Congress has provided no limitation. But it has *declined* to do so when application of state limitations would impair supremacy (*Holmberg* v. *Armbrecht*, 327 U.S. 392) or the necessary uniformity in implementation of such inherently national rights as arise in maritime and interstate commerce law. See *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221; *Burnett* v. *New York Central R. Co.*, 380 U.S. 424. Certainly, if uniformity precludes differing state limitations under FELA, as this Court held in *Burnett*, the same result must obtain under Section 301.

The uniformity consideration which precludes adoption of varying state limitations to fill the federal void, is highlighted in the concurring opinion of Mr. Justice Brennan in *McAllister, supra*, in terms applicable in the present setting (357 U.S. at 228-230):

> ". . . I do not believe that the absence of specific directions from Congress leads necessarily to the result that state statutes of limitations should apply in cases of this sort . . . the three-year limitation on the Jones Act remedy, 45 U.S.C. § 56, is the ready and logical source to draw upon for determining the period within which this federal right may be enforced. This period should be applied in an action for unseaworthiness brought in a state court, just as it would be applied by the state courts in actions brought under the Jones Act, *Engel* v. *Davenport*, supra. Such a result would be in harmony with the practice in federal admiralty courts of applying state statutes of limitations in enforcing state-created rights. *Western Fuel Co.* v.

> *Garcia*, 257 U.S. 233. The alternative of subjecting the parties' rights to the variant state statutes of limitations and the consequent uncertainty of legal obligation would inject an unnecessarily sporting element into the affairs of men. Cf. *Guaranty Trust Co.* v. *York*, 326 U.S. 99. The mischief to be avoided is the possibility of shopping for the forum with the most favorable period of limitations."

We submit that in adopting the diverse norms of state limitations the court below violates this Court's rulings requiring "a uniform body of federal substantive law" under Section 301, and its decisions declining to adopt state limitations in analogous situations arising under maritime and interstate commerce jurisdiction. The implementation of Section 301 requires uniform federal limitations standards.[3]

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[3] The rejection of diverse state limitations would not leave this Court without sources for fashioning a limitations standard under Section 301. No less than other principles relegated under *Lincoln Mills* to judicial elaboration, a limitations period can be fashioned by recourse to analogous federal and state norms. (Such recourse to state law for the creation of a federal standard is, of course, a far cry from the state-by-state approach espoused by the court below.)

In fashioning Section 301 limitations standards the doctrine of laches might well be applied, particularly in litigation on arbitral awards, employee discharges, and cases sounding more in equity than law (cf. *Holmberg* v. *Armbrecht*, 327 U.S. 392). In more traditional money damage or wage claims cases this Court might look to generally prevailing statutory limits for suits on contracts. But whatever standard may be adopted, it seems clear that in the present case limitations were tolled by the state suit. That suit was promptly filed after the contract breach; when the *Westinghouse* limitation was removed in *Evening News* and after the Indiana courts had dismissed the state action, this federal suit was filed. As this Court recently emphasized in tolling the FELA limitations period: ". . . the basic inquiry is whether Congressional purpose is effectuated by tolling the statute of limitations in given circumstances." *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, 427. Since the company was from the first put on notice by the state litigation of this contract claim, every consideration of fairness requires tolling of limitations in the present circumstances.

3. *The Decisional Grounds Espoused Below Violate This Court's Pronouncements and Give Rise to a Serious Constitutional Issue.* All apart from the ultimate ruling below, weighty and even constitutional questions are presented by the predicates upon which the lower court rests that ruling. The court opines that while this suit is brought on the vacation pay provisions of the collective bargaining agreement, the action is "actually" grounded on the individual contracts of hire between workers and the company. From that premise the court finds that the action is only one by the union as an agent suing under subsection (b) of Section 301 and *not* subject to subsection (a). And the capstone of this syllogism is the court's conclusion that the contract violation alleged in the suit is purely "a question of state law," which Congress has directed federal courts to adjudicate without recourse to any federal substantive law or uniformity on such matters as limitations.[4]

The central and crucial mistake in the lower court's rationalization is, of course, its view that this suit is actually "based on the contracts of employment between the individual employees and defendant," rather than on the provisions of the union-employer collective bargaining agreement. True, if there had been no employees there would have been no collective bargaining agreement. But to say that because the vacation pay provisions of the bargaining agreement secured employee rights the suit is

[4] The court below states that "the mere fact that the Union is bringing this action instead of the individual employees involved . . . cannot be permitted to circumvent the [Indiana] statute of limitations . . ." *But the assumption that the Indiana statute would necessarily apply had the action been brought in state court by the individual employee begs the central question.* For, as we have previously emphasized, the limitations period of the jurisdiction which is the source of the substantive right, rather than that of the forum, is the governing norm. And if the implementation of Section 301 requires uniform federal limitations standards, then it does so no less when the case is brought in a state court than in a federal court. *Cf. Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95.

"based on" the individual contracts of hire rather than the collective bargaining agreement, is to affirm *generally* that Section 301 actions are not based upon collective agreements. After all, with but few exceptions (*e.g.*, the check-off), the vast majority of collective bargaining agreement provisions secure employee rights, not union rights.[5]

In any event, it is too late in the day to make the collective agreement subservient to the "individual contracts of employment" and transmute a Section 301 suit on a collective agreement into a common-law action for wages. It was the same concept of rights arising "from separate hiring contracts between the employer and each employee" which troubled this Court in *Association of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, 464, and which the Court recently rejected in *Smith* v. *Evening News*, 371 U.S. 195, 200. In *Evening News* this Court made it clear that no immutable line of demarcation exists between individual employee rights and union rights inhering in collective bargaining agreements:

> "The concept [of *Westinghouse*] that all suits to vindicate individual employee rights arising from a collective bargaining contract should be excluded from the coverage of § 301 has thus not survived. The rights of individual employees concerning rates of pay

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[5] The lower court's erroneous view that the action is "based on the contracts of employment between the individual employees and defendant" not only leads to its mistaken conclusion that the limitations question is one of state rather than federal law; it also leads it to select the Indiana statute applicable to oral contracts rather than that governing written contracts. Whichever way this Court may ultimately resolve the issue as to the applicability of diverse state limitations periods to Section 301, we urge (*supra*, p. 2) concurrent consideration of the ruling below that a suit on the vacation pay provisions of a collective bargaining agreement is, for limitations purposes, to be treated as if it were based on the individual oral hiring contracts. Cf. *Leh* v. *General Petroleum Corp.*, #4, Oct. Term, 1965.

and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based."

Equally vulnerable is the lower court's ruling, based on its "individual contract of employment" theory, that this suit is under Section 301(b) by the union "in behalf of the employees whom it represents," and not subject to Section 301(a) "for the simple reason that no one contends that the defendant owes any wages to the union." This is certainly novel embroidery on this Court's rejection in *Evening News* of the *Westinghouse* ruling which had read wage suits out of Section 301(a). Faced with *Evening News,* the court below cannot avoid recognition of Section 301 jurisdiction, but now purports to find it only in a procedural subsection which this Court has never viewed as a grant of jurisdiction to the federal courts.

Finally, by its "individual contract" rationale the court below *creates the very problem* under Article III of the Constitution which *Westinghouse* had sought to avoid by rejecting federal jurisdiction. The court below concludes that the Indiana statute of limitations applies *because* this vacation pay suit presents "a question of state law" for which Congress has provided a naked federal forum in 301(b). But if Congress has thus created federal jurisdiction solely to resolve a question of state law, the court below has validated the constitutional infirmity which prompted this Court in *Westinghouse* to *reject* federal jurisdiction, and which it definitively avoided after *Lincoln*

Mills by holding that Section 301 invokes "federal substantive law."

In sum, to the other serious errors of the opinion below there must be added the defect that it approves a naked grant of jurisdiction to federal courts to resolve a question of state law. Such a decision cries out for review not only because it wrongly resolves an important federal question on grounds violative of this Court's decisions, but also because it does so on a premise which creates a serious issue under Article III of the Federal Constitution.[6]

Conclusion

The issue presented is one of general concern in the elaboration of Section 301 rights and the enforcement of collective bargaining agreements throughout the nation. We urge review of this important issue, which the court below has resolved contrary to this Court's rulings calling for a uniform body of federal law under Section 301 of the Labor-Management Relations Act.

Respectfully submitted,

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[6] In view of the constitutional issue, 28 U.S.C. 2403 may be applicable, and there has been no certification below to the Attorney General pursuant to that section. Accordingly, this petition has been served on the Solicitor General pursuant to Rule 33(2)(b).

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 14945 SEPTEMBER TERM—APRIL SESSION, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Plaintiff-Appellant,*

v.

HOOSIER CARDINAL CORPORATION, AN INDIANA CORPORATION, *Defendant-Appellee*

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division

JUNE 4, 1965

Before SCHNACKENBERG, KNOCH and SWYGERT, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, plaintiff, appeals from a judgment of the district court dismissing plaintiff's complaint because it showed on its face that the causes of action upon which recovery was sought were barred by the statute of limitations of the state of Indiana.

The complaint avers that plaintiff, hereinafter sometimes referred to as the Union, having a collective bargaining agreement with Hoosier Cardinal Corporation, an Indiana corporation, defendant, which required vacation pay for its employees, by this action seeks to rely upon various statutes of the state of Indiana, (a) providing for the payment of wages due to employees at least weekly, Burns Ind. Stat. Ann. (1952 Repl.) § 40-104, (b) making an employer who fails for 10 days after demand to make payment therefor weekly liable for the same together with penalty and reasonable attorneys' fees, to be recovered in a civil action, Burns Ind. Stat. Ann. (1952 Repl.) § 40-105, and (c) providing liquidated damages for

such failure to pay, for each day, 10% of the amount due twice each month, not exceeding double the amount of wages due, and a reasonable fee for plaintiff's attorney, as provided in Burns Ind. Stat. Ann. (1952 Repl.) § 40-102.

It is significant that in this case no recovery is sought for or on behalf of plaintiff union itself. Any recovery in this case would inure to the exclusive benefit of the individual employee in varying amounts depending upon the individual's employment contract with defendant.

The district court relied on Burns Ind. Stat. Ann. (1946 Repl.) § 2-601 (Supp.), which provides a six-year statute of limitations on accounts and contracts not in writing.

The district court noted that the complaint herein was filed on April 8, 1964, which was more than six years from June 1, 1957 when the alleged breach of employment with individual employees occurred.

We agree with and affirm the holding and judgment of the district court. Before arriving at this conclusion we have considered each of the two reasons advanced by plaintiff which seeks to demonstrate that the district court erred.

First, plaintiff contends that no state statute of limitations can bar an action under section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185. It arrives at this conclusion by reasoning that

> "* * * it is a firm, well-established, and judicially recognized policy of Congress that insofar as concerns the application of legal principles, the resolution of labor questions under federal law should not depend in any manner upon the geographic location in which such an action arises. While the fostering of uniformity in this area normally concerns substantive legal issues, procedural rules which may be dispositive of a dispute (such as the question here involved of the application of a state statute of limitations) are no less significant. The decision of the court below to impose local time limitations on a Section 301 action disturbs the national design of having a federal labor law uniformly applied. * * *"

However it should be noted that § 185 (a) deals with "suits for violation of contracts between an employer and a labor organization representing employees in an industry * * *". The case at bar is not a suit by plaintiff to recover wages due it from defendant, for the simple reason that no one contends that defendant owes any wages to the Union. Therefore we perceive that plaintiff is in error in characterizing the subject matter of this case as the resolution of a labor question. Moreover, § 185 (b) authorizes a labor organization to sue "in behalf of the employees whom it represents in the courts of the United States". There is before us actually a case by an agent to enforce the rights of individual workmen to collect from defendant vacation pay, which it is claimed was due them individually under Indiana law and for which it is clear that they individually could have brought their own suits in the state courts of Indiana. The present suit frankly characterizes the choses in action involved as existing by virtue of the statutory law of Indiana. The question of whether vacation pay is due the workmen here involved is a question of state law. It remains a question of state law even though the terms of a bargaining agreement authorize the workmen's personal rights of action to be maintained for them by their union. The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action. Therefore it is subject to the Indiana statute of limitations.

This result is in accordance with our prior holding in *Kordewick* v. *Indiana Harbor Belt R. Co.*, 7 Cir., 157 F. 2d 753 (1946), cert. den. 329 U. S. 806, where we found that such a contract was oral and thus barred by the Illinois statute of limitations.

To the same effect, and involving the Indiana statute of limitations, is *Albrecht* v. *Indiana Harbor Belt R. Co.*, 7 Cir., 178 F. 2d 577 (1949), where at 578, we said:

> "Although the case at bar was commenced in the District Court of Indiana, the contract nevertheless is to be interpreted under Illinois law. It must still be regarded as an oral contract. However, we must

here apply the applicable Indiana statute of limitations. Guaranty Trust Co. v. York, 326 U.S. 99, 65 S. Ct. 1464, 89 L. Ed. 2079, 160 A.L.R. 1231. Federal Courts are required to give such interpretations to State statutes of limitations as are given to such statutes by the highest court of such States. Moore v. Illinois Central Railroad Co., 312 U.S. 630, 61 S.Ct. 754, 85 L. Ed. 1089. The law of the forum determines whether the action is barred. Karvalsky v. Becker, 217 Ind. 524, 29 N.E. 2d 560, 131 A.L.R. 1074; Hobbs v. Ludlow, 199 Ind. 733, 160 N.E. 450. Burns Ind. Stats. Anno. (1933), Sec. 2-601, provide that actions on oral contracts shall be barred unless commenced within six years after the cause of action accrued.

"The complaint shows on its face that the alleged violations of the contract occurred from August 13, 1926, to December 12, 1938. This action was commenced August 4, 1947. It thus affirmatively appears that this action was not commenced within the six years after the alleged cause of action accrued. It follows that the complaint did not state a claim upon which relief can be granted, and the complaint and action were properly dismissed."

We agree with counsel for defendant when he says in his brief that the mere fact that the Union is bringing this action instead of the individual employees involved does not change the rule that the statute of limitations has barred this action. It is the *cause of action which is barred* by the statute of limitations and *not the particular person bringing the action.* The individual former employees of the defendant for whose benefit this action for vacation pay alleged to be due is brought cannot be permitted to circumvent the statute of limitations, which has clearly barred their claims, by having the Union bring the action in their behalf.

Inasmuch as the recovery sought in the case at bar is solely for the benefit of individual employees, we cannot escape the conclusion that the presence of the Union as the plaintiff cannot justify the maintenance of this action which really belongs to the individual employees, as against the

defense of the Indiana statute of limitations of six years.

Secondly, we reject plaintiff's contention that, if any state statute of limitations applies, this case would be governed by Indiana's 20-year statute of limitations covering actions on written contracts. As we have indicated, plaintiff's action in the district court was based upon the contracts of employment between the individual employees and defendant. There is no evidence or contention that these employment contracts were ever reduced to writing. It was for wages due under these employment contracts that the present action was brought. The 6-year statute of limitations applied to the action. The fact that the authority of the Union to bring the action on behalf of the employees is evidenced by a written agreement is of no significance in determining what Indiana statute of limitations is applicable to the action.

We have given special attention to plaintiff's reliance upon *Smith* v. *Evening News Assn.*, 371 U.S. 195 (1962). As a result thereof, it is our opinion that the result which we now reach in the case at bar is not at variance with the views expressed in the majority opinion in *Smith*.

While defendant makes two other convincing arguments in support of its position in this court, we consider it unnecessary to discuss them, because, for the reasons already given, we deem it necessary that the judgment from which this appeal was taken be affirmed. It is so ordered.

JUDGMENT AFFIRMED.

SWYGERT, *Circuit Judge* (concurring). I concur in affirmance of judgment.

* * * * * * *

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT,
CHICAGO, ILLINOIS 60610

Friday, June 4, 1965

BEFORE: Hon. ELMER J. SCHNACKENBERG, Circuit Judge, Hon. WIN G. KNOCH, Circuit Judge, Hon. LUTHER M. SWYGERT, Circuit Judge.

No. 14945

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Plaintiff-Appellant,*

vs.

HOOSIER CARDINAL CORPORATION, AN INDIANA CORPORATION, *Defendant-Appellee*

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Evansville Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX B

State Statutes of Limitations Governing Contract Actions

	1 year	2 years	3 years	4 years	5 years	6 years	8 years	10 years	More than 10 years
All Contracts			Colorado [2]	Hawaii [3]	Missouri [6]	Colorado [2] Hawaii [3] Michigan Minnesota New York North Dakota Tennessee		Louisiana [5] Missouri [6]	
All except sealed			Delaware District of Columbia Maryland North Carolina			Alabama Alaska Maine Massachusetts New Hampshire New Jersey Oregon Pennsylvania [9] Rhode Island [10] South Carolina South Dakota Vermont Wisconsin			
Written, whether or not sealed				Arizona [1] California Texas [11]	Arkansas Idaho Kansas Nebraska [7] Oklahoma	Arizona [1] Mississippi New Mexico Nevada Utah Washington	Montana	Illinois Indiana [4] Iowa West Virginia Wyoming [12]	Indiana (20) [4] Ohio (15)
Written, not sealed					Florida Virginia	Connecticut Georgia			
Sealed							Vermont	Alabama Alaska North Carolina Oregon Virginia Wisconsin [12]	Connecticut (17) District of Columbia (12) Florida (20) Georgia (20) Maine (20) Maryland (12) Massachusetts (20) New Hampshire (20) New Jersey (16) [8] Rhode Island (20) [10] South Carolina (20) South Dakota (20) Wisconsin (20) [12]
Oral		California Texas [11]	Arizona Arkansas Connecticut Florida Kansas Mississippi Oklahoma Virginia Washington	Georgia Idaho Nebraska Nevada New Mexico Utah	Illinois Iowa Kentucky Montana West Virginia	Indiana Ohio	Wyoming [12]		
Ware	Delaware	Idaho	Louisiana [5]						

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						Minnesota New York North Dakota Tennessee			
All except sealed			Delaware District of Columbia Maryland North Carolina			Alabama Alaska Maine Massachusetts New Hampshire New Jersey Oregon Pennsylvania [9] Rhode Island [10] South Carolina South Dakota Vermont Wisconsin			
Written, whether or not sealed				Arizona [1] California Texas [11]	Arkansas Idaho Kansas Nebraska [7] Oklahoma	Arizona [1] Mississippi New Mexico Nevada Utah Washington	Montana	Illinois Indiana [4] Iowa West Virginia Wyoming [12]	Indiana (20) [4] Ohio (15)
Written, not sealed					Florida Virginia	Connecticut Georgia			
Sealed							Vermont	Alabama Alaska North Carolina Oregon Virginia Wisconsin [12]	Connecticut (17) District of Columbia (12) Florida (20) Georgia (20) Maine (20) Maryland (12) Massachusetts (20) New Hampshire (20) New Jersey (16) [8] Rhode Island (20) [10] South Carolina (20) South Dakota (20) Wisconsin (20) [12]
Oral		California Texas [11]	Arizona Arkansas Connecticut Florida Kansas Mississippi Oklahoma Virginia Washington	Georgia Idaho Nebraska Nevada New Mexico Utah	Illinois Iowa Kentucky Montana West Virginia	Indiana Ohio	Wyoming [12]		
Wage Suits	Delaware Louisiana [5] New Mexico (60 days)	Idaho Iowa South Dakota Wisconsin	Louisiana [5] Pennsylvania						

[1] 4 years on contract made out of the state; 6, within the state.
[2] 3 years for personal action on a contract; 6, for action on debt founded on a contract.
[3] 4 years for all personal actions on contract except one in debt founded on contract—6 years.
[4] 10 years on written contract for payment of money; 20 years on other written contracts.
[5] 1 year on actions of "workmen, laborers and servants, for the payment of their wages"; 3 years on actions "for salaries of overseers, clerks, secretaries . . ."; 5 years on action "for nullity or rescission of a contract"; 10 years on all other personal actions.
[6] 10 years on contract action for payment of money or property; 5 years all others.
[7] But 4 years on action for damages for failure or want of consideration of contract.
[8] 16 years only on sealed obligations for the payment of money.
[9] 6 years only on action in debt.
[10] Both 6 and 10 year statutes apply only to actions in debt.
[11] Both 2 and 4 year statutes apply only to actions in debt.
[12] 10 years on causes of action accruing out of the state; 20 years within the state.
[13] But 5 years on contracts contracted before the debtor became a resident.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,
Petitioner,

vs.

HOOSIER CARDINAL CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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INDEX.

	PAGE
Opinion Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	4
Statement	5
Argument	9
I. There Is No Conflict With the Decisions of This Court	10
II. There Is No Conflict Among the Circuits	14
III. There Is No Important Federal Question Involved in This Case	15
IV. The Facts in the Record Raise No Substantial Constitutional Issue	17
Conclusion	19

CITATIONS.

Cases.

Amy v. Dubuque, 98 U. S. 470, 25 L. Ed. 228 (1878)	11
Bauserman v. Blunt, 147 U. S. 647 (1892)	11
Board of Commissioners of Marion County v. Shipley, 77 Ind. 553 (1887)	17
Burnett v. New York Central R. Co., 380 U. S. 424	12
Campbell v. City of Haverhill, 155 U. S. 610, 15 S. Ct. 217 (1895)	11
Carskaddon v. City of South Bend, 141 Ind. 596, 39 N. E. 667 (1895)	17
Charles Dowd Box v. Courtney, 368 U. S. 502, 82 S. Ct. 519 (1962)	16

Chattanooga Foundry and Pipe Works v. City of Atlanta, 203 U. S. 390, 27 S. Ct. 65 (1906) 10

Cope v. Anderson, Receiver, 331 U. S. 461, 67 S. Ct. 1340 (1947) 10

Falsetti v. Local 2026, No. 14263 (District Court opinion at 34 F. R. D. 461) 14

Fischbach and Moore, Inc. v. International Union of Operating Engineers, No. 19476 (District Court opinion at 198 F. Supp. 911) 15

Hackleman v. Board of Commissioners of Henry County, 94 Ind. 36 (1884) 17

Hedgebeth v. State of North Carolina, 334 U. S. 806, 68 S. Ct. 1185 (1948) 8

Higham v. Harris, 108 Ind. 246, 8 N. E. 255 (1886) .. 17

Holmberg v. Armbrecht, 327 U. S. 392, 66 S. Ct. 582 (1946) 11

Local 174, Teamsters v. Lucas Flour Co., 396 U. S. 95, 82 S. Ct. 571 (1962) 10

McAllister v. Magnolia Petroleum Co., 357 U. S. 221, 78 S. Ct. 1201 (1951) 10, 12

McClaine v. Rankin, 197 U. S. 154, 25 S. Ct. 410 (1904) 11

Michael v. Ranier, 205 N. E. 2d 543, ... Ind. ..... (1965) 17

Moore v. Ohl, 65 Ind. App. 691, 116 N. E. 9 (1917) 17

O'Sullivan v. Felix, 233 U. S. 318, 34 S. Ct. 596 (1913). 11

Rawlings, Receiver v. Ray, 312 U. S. 96, 61 S. Ct. 473 (1941) 10

Republic Steel Corp. v. Maddox, 379 U. S. 650, 85 S. Ct. 615 (1965) 18

Textile Workers v. Lincoln Mills, 353 U. S. 448, 77 S. Ct. 912 (1957) 10

Tomilson v. Briles, 101 Ind. 538, 1 N. E. 63 (1885)... 17

Tully v. Fred Olsen Motor Service Company, 134 N. W. 2d 393 (1965)..... 14

Smith v. Evening News, 371 U. S. 195, 83 S. Ct. 267 (1962) 18

Statutes.

Labor-Management Relations Act, Section 301, 29 U. S. C. A., Section 185.....16, 17

45 U. S. C. A., Section 56..... 12

46 U. S. C. A., Section 688..... 11

Burns' Indiana Statutes Annotated, 1946 Replacement (Supp.), Sec. 2-601..... 3

Burns' Indiana Statutes Annotated, 1946 Replacement (Supp.), Sec. 2-602..... 4

Burns' Indiana Statutes Annotated 1933, 1952 Replacement, Sec. 40-102..... 2

Burns' Indiana Statutes Annotated 1933, 1952 Replacement, Sec. 40-104..... 3

Burns' Indiana Statutes Annotated 1933, 1952 Replacement, Sec. 40-105..... 3

Miscellaneous.

6 Indiana Law Encyclopedia, "Contracts," Section 51, page 110 17

19 Indiana Law Encyclopedia, "Limitations of Actions," Section 22, page 17..... 17

162 ALR at 725..... 13

G. P. O., Legislative History of the Labor-Management Relations Act 1 et seq. (1950)..... 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 387.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,

Petitioner,

vs.

HOOSIER CARDINAL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

To The Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

OPINION BELOW.

The opinion and judgment of the Court of Appeals for the Seventh Circuit is reported in 59 LRRM 2448 and appears in Appendix A, pp. 17 to 22 attached to the petition for a writ of certiorari filed herein.

JURISDICTION.

The opinion and judgment of the Court of Appeals, affirming the District Court's dismissal of petitioner's suit, was entered on June 4, 1965. No petition for rehearing was filed. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code.

STATUTES INVOLVED.

The petitioner has adequately set forth the federal statutes involved herein. It has, however, omitted certain pertinent and applicable Indiana statutes relied upon by the petitioner in the District Court, some of which were specifically pleaded and relied upon in Paragraph 10 of complaint filed in this action and involved the Indiana statutes for penalties, liquidated damages and attorneys' fees.

The Indiana statutes involved herein are as follows: Sections 40-102; 40-104; 40-105 of Burns' Indiana Statutes Annotated, 1933, 1952 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 and Act of said General Assembly for the year 1933, Chapter 47, Section 2) provide:

> 40-102. Semimonthly payment—Penalty and damages.—Every such person, firm, corporation or association who shall fail to make payment of wages to any such employee, as provided in section one [§ 40-101] of this act, shall, as liquidated damages for such failure, pay to such employee for each day that the amount due to him remains unpaid ten [10] per cent of the amount due to him in addition thereto, not exceeding double the amount of wages due, and said damages may be recovered in any court having jurisdiction of a suit to recover the amount due to such employee, and in any suit so brought to recover said wages, or the liquidated damages for nonpayment thereof, or both, the court shall tax and assess as costs in said case a

reasonable fee for the plaintiff's attorney or attorneys. [Acts 1933, ch. 47, § 2, p. 371.]

40-104. Weekly payment.—Every corporation, association, company, firm or person engaged in this state in mining coal, ore or other mineral, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading, barrels, brick, tile, machinery, agricultural or mechanical implements, or any article of merchandise, shall pay each employee of such corporation, company, association, firm or person, if demanded, at least once every week, the amount due such employee for labor, and such payments shall be in lawful money of the United States, and any contract to the contrary shall be void. [Acts 1911, ch. 68, § 1, p. 110.]

40-105. Weekly payment—Penalty and damages.—Every corporation, company, association, firm or person who shall fail for ten [10] days after demand of payment has been made to pay employees for their labor, in conformity with the provisions of this act [§§ 40-104—40-109], shall be liable to such employee for the full value of his labor, to which shall be added a penalty of one dollar [$1.00] for each succeeding day, not exceeding double the amount of wages due, and a reasonable attorney's fee, to be recovered in a civil action and collectable without relief. [Acts 1911, ch. 68, § 4, p. 110.]

Sections 2-601; 2-602 of Burns' Indiana Statutes, Annotated, 1933, 1965 Pocket Supplement to 1946 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1881 (Spec. Sess.), Chapter 38, S. 37, p. 240; 1951, Ch. 301, S. 1, p. 999 and Act of said General Assembly for the year 1881 (Spec. Sess.), Chapter 38, S. 38, p. 240; 1951, Ch. 301, S. 2, p. 999) provide:

2-601. *Limitation of actions—Six-year Statute.*—The following actions shall be commenced within six (6) years after the cause of action has occurred, and not afterwards.

First. On accounts and contracts not in writing. . . . (Acts 1881 (Spec. Sess.) Ch. 38, S. 37, p. 240; 1951; Ch. 301, S. 1, p. 999)

2-602. *Limitation of actions—Two, five, six, ten and twenty years.*—The following actions shall be commenced within the periods herein.

First. For injuries to person or character, for injuries to personal property, and for a forfeiture of penalty given by statute, within two (2) years. . . .

Sixth.[1] Upon contracts in writing other than those for the payment of money within twenty (20) years. . . . (Acts 1881 (Spec. Sess.), Ch. 38, S. 38, p. 240; 1951, Ch. 301, S. 2, p. 999)

QUESTIONS PRESENTED.

1. The primary question is whether the District Court and the Court of Appeals correctly held that the Indiana statutes of limitations and the interpretation given to them by the Indiana courts applies to this action and, in following such statutes, correctly dismissed petitioner's cause of action herein.

2. The secondary questions are (a) whether a state statute of limitations applies in an action brought under Section 301 of the Labor Management Relations Act where the latter act does not contain a statute of limitations; (b) whether under Indiana law a claim for wages by an employee whose employment contract is oral, although supplemented by a union contract, is an action on an oral contract so as to be barred by the Indiana six year statute of limitations; and (c) where in an action by a union to recover individual employee's claims for vacation pay, brought

1. Although the Respondent does not consider that this statute is applicable, the petitioner refers to it at page 5 of its Appellant's Brief before the Circuit Court below and took the position that if any Indiana statute of limitations were to apply, it should be the 20 year statute referred to above. See Appellant's Brief and Appendix pages 5, 8, 16-20 for this argument.

under Section 301 of the Labor Management Relations Act, there is joined with it a claim for penalties, statutory damages and attorney fees provided solely by the Indiana statute, such action is in effect an Indiana action and is governed solely by the statutes of limitations of that state.

STATEMENT.

On April 8, 1964 the petitioner herein filed an action in the United States District Court for the Southern District of Indiana for the recovery of vacation pay allegedly due the former employees of respondent. Rhetorical paragraph 10 of said complaint states as follows: "That pursuant to the Acts of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof and in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due to the employees represented by the plaintiff an amount equal to double unpaid wages which amount is in excess of Eighty Thousand Dollars ($80,000.00)." (Appellant's Brief and appendix, p. 5a.) Petitioner's prayer for relief is as follows: "Wherefore, the plaintiff asks judgment against the defendant corporation in the amount of Forty Thousand Dollars ($40,000.00) together with liquidated damages in the amount of Eighty Thousand Dollars ($80,000.00) together with a reasonable fee for plaintiff's attorney together with its costs and prays that the plaintiff may have such further relief as to the Court seems just."

As shown by petitioner's complaint certain employees of respondent were terminated on or about June 1, 1957 because of the fact that respondent discontinued their employment. As to the action herein filed by the petitioner in April of 1964, the respondent raised the issues of statute of limitations, lack of jurisdiction and standing to sue on the part of petitioner by a motion to dismiss filed on

May 4, 1964 with the District Court. Attached to said motion as Exhibit A is an affidavit of T. J. Morton, president of respondent, which states in part as follows: "That all of the former employees of the defendant whose names appear on Exhibit B attached to plaintiff's complaint . . . were . . . continuously employed by the said defendant under verbal or oral contracts of employment and that none of said former employees at any time prior to their discharge by the defendant herein on or about June 1, 1957 were ever employed under any written employment contract with defendant." Respondent's motion to dismiss, supported by affidavit, was in effect a motion for summary judgment. Petitioner, however, has never at any time filed any affidavits contradicting the above statement and no other matter appearing in the record is to the contrary.

The individual contracts of employment upon which petitioner sought to recover vacation pay and the aforesaid damages consisted of verbal employment contracts as supplemented by the written union contract. The Circuit Court, applying the law of Indiana, states that for the purpose of the Indiana statute of limitations such a contract was an oral contract and not a contract in writing. (Pet. App. 19-21.)

On November 12, 1964, the District Court filed an opinion, reported in 235 F. Supp. 183, upholding the respondent's contention that "the complaint shows on its face that the causes of action upon which recovery is sought on behalf of the individual former employees of the defendant were barred by the statute of limitations of the State of Indiana. . . . at the time this action was commenced . . ." The opinion issued by the Court of Appeals for the Seventh Circuit on appeal by the petitioner on June 4, 1965 affirmed the opinion of the District Court. The Circuit Court found that: "The complaint avers that plaintiff . . . seeks to rely upon various statutes of the state of Indiana." (Pet. App.

p. 17.) Therefore, "the present suit frankly characterizes the choses in action involved as existing by virtue of the statutory laws of Indiana . . . The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action. Therefore it is subject to the Indiana statute of limitations." (Pet. App. p. 19.) It was the Circuit Court's opinion that under the issues raised in the record before it, it was not required to reach an issue of federal substantive law as applied to labor relations because: "There is before us actually a case by an agent to enforce the rights of individual workmen to collect from defendant vacation pay, which it is claimed was due them individually under Indiana law and for which it is clear that they individually could have brought their own suits in the state courts of Indiana." There is nothing in the record herein to show that at any time the petitioner took any form of transfer either orally or in writing the alleged vacation pay claims of the employees of respondent mentioned in Exhibit B attached to petitioner's original complaint filed in the District Court. (Pet. App. pp. 18 and 19.)

The petitioner's statement of the case at page 3 and the top of page 4 of its petition herein, with reference to the case of *Johnson* v. *Hoosier Cardinal Corp.* which was filed in the Superior Court of Vanderburgh County, Indiana as a class action for the benefit of the same employees who are the beneficiaries of the action herein and which was for the same vacation pay and statutory penalties sought to be recovered herein, and the reference also raised to this action in footnote 3, page 12, is rather surprising because none of the facts with reference to this prior action in the state court have ever been made a part of the record in this cause, either in the case while it was pending in the District Court or while it was pending in the Circuit Court below,

and was not argued before the District Court or the Circuit Court below. Under the circumstances, such action cannot be considered by this Court nor is it material to this action. (*Hedgebeth* v. *State of North Carolina,* 334 U. S. 806, 68 S. Ct. 1185 (1948).) It is further surprising because inasmuch as the prior action was for the benefit of the same employees and seeking the same recovery that is sought in this subsequent action, the prior action would clearly be *res judicata* as to this action and would be a bar to this action in any event.

ARGUMENT.

It is submitted that it is abundantly clear that the decision below is based on settled principles and is clearly correct. This case does not involve an important federal question and the decision of the Court below does not conflict with this Court's rulings or those of the various Courts of Appeal, or give rise to any constitutional issue.

The petition for certiorari is devoted almost exclusively to the general proposition that this Court should create a uniform period of limitations applicable to all actions under Section 301 of the Labor Management Relations Act, as amended, regardless of the type of relief sought or the theory of recovery, even though Congress, in enacting Section 301, did not deem it necessary to incorporate a statute of limitations for actions brought under that Section of the Act. The petitioner, in effect, is asking this Court to find that there is no period of limitations applicable to actions brought under Section 301, regardless of the theory of recovery, or, on the other hand, suggests that if the Indiana statute of limitations does apply that this Court find that the limitation period is long enough, namely, twenty years, in order to permit the petitioner to bring its action herein. This inconsistency is compounded by the petitioner when its main proposition is that the decision of the Court below, by applying the state statute, would create a lack of national uniformity on when causes of action may be brought under Section 301, and at page 10 petitioner further argues that it is clear that the applicable statute of limitations must also be a matter of uniform law without state by state differentiations. Petitioner then urges that national uniformity is vitally necessary in Section 301 actions, yet

would, in effect, have the Court say that a Section 301 action could be brought at any time without regard to state statutes of limitations or, for that matter, any period of limitations. This position would lead to a maximum lack of uniformity.

If this Court, therefore, were to take petitioner at its word, it would mean that following a principle of national uniformity guided under the general rule of cases such as *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 77 S. Ct. 912 (1957), *Local 174, Teamsters* v. *Lucas Flour Co.*, 396 U.S. 95, 82 S. Ct. 571 (1962), petitioner herein cannot on the basis of its own argument, be granted any affirmative relief herein. This is true because if petitioner is to prevail it must show some legal basis for the proposition that a twenty year period of limitations or no period of limitations at all must apply in Section 301 claims even in light of its own argument that national uniformity is necessary in such actions and that this uniformity should be shaped in light of the intent of Congress in enacting the Labor Management Relations Act, as amended, which Act has as its principle speed and dispatch in labor relations.

I.

THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT.

It is a well established principle of the federal law that where a federal statute relating to specific subject matter does not contain any period of limitations, the state statute of limitations and the interpretation placed on it by the state courts controls. *Chattanooga Foundry and Pipe Works* v. *City of Atlanta*, 203 U.S. 390, 27 S. Ct. 65 (1906); *Rawlings, Receiver* v. *Ray*, 312 U.S. 96, 61 S. Ct. 473 (1941); *Cope* v. *Anderson, Receiver*, 331 U.S. 461, 67 S. Ct. 1340 (1947); *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S.

221, 78 S. Ct. 1201 (1951); *O'Sullivan* v. *Felix,* 233 U.S. 318, 34 S. Ct. 596 (1913); *Campbell* v. *City of Haverhill,* 155 U.S. 610, 15 S. Ct. 217 (1895); *Holmberg* v. *Armbrecht,* 327 U.S. 392, 66 S. Ct. 582 (1946); *McClaine* v. *Rankin,* 197 U.S. 154, 25 S. Ct. 410 (1904); *Bauserman* v. *Blunt,* 147 U.S. 647 (1892); *Amy* v. *Dubuque,* 98 U.S. 470, 25 L. Ed. 228 (1878). Apparently, petitioner hopes to obtain a very substantial departure from this well established rule. Contrary to petitioner's claim of lack of uniformity, this rule in fact establishes a principle of uniformity in situations involving federal statutes lacking a specific period of limitations, *i.e.,* automatic application of the appropriate state period of limitations.

At page 6 of its petition the petitioner cites three cases for the proposition that this Court has declined to apply an appropriate state period of limitations in cases similar to that now before this Court. It is respondent's position that these cases are not applicable here. Two of these cases, in fact, involved actions wherein a federal statute of limitations was involved, while the third concerned the application of an equity rule formulated by this Court for actions on that side of this Court. Thus, it is that *McAllister* v. *Magnolia Petroleum Co., supra,* involved a claim for relief grounded on a violation of the Jones Act for negligence (46 U.S.C.A. Sec. 688) and under the general maritime law for unseaworthiness. This Court held that "it is unnecessary for us to decide the broad question of whether a state court is free to apply its own statutes of limitation to an admiralty right of action" (357 U.S. at 244, 78 S. Ct. 1203) because "Congress has provided that a seaman shall have three years to bring his action under the Jones Act" (357 U.S. at 225, 78 S. Ct. 1204). Therefore, the issue in *McAllister* was not the absence of any guide as to a period of limitations applicable to a federal claim, but rather whether or not a specific federal period of limitations

should apply to all aspects of the case since there was a direct expression by Congress as to the preferred period of limitations. Finally, in his concurring opinion, Justice Brennan observed: "Where federal statutes, which create federal rights of action, do not include a period of limitations, it has been the practice of state and federal courts to apply state statutes of limitations," 357 U.S. at 328, 78 S. Ct. 1206. Thus, *McAllister* is merely a restatement of the rule that respondent contends applies to the case now before this Court on the petition herein and rather than support for petitioner it is clear authority supporting the finding of the District and Circuit Courts to the effect that the appropriate state statute applies to petitioner's claim.

In a similar manner, the recent case of *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, did not directly concern a question of an applicable period of limitations, since it was assumed in the action brought under the Federal Employers' Liability Act that the three year period of limitations applicable thereunder was controlling in the case. 45 U.S.C.A. Sec. 56. The issue was whether or not dismissal of a case for improper venue tolled the period of limitations applicable to cases brought under the Federal Employers' Liability Act. This case did not raise any issue as to the appropriate period of limitations when an action is brought under a federal statute which contains no period of limitations. It should be noted that in coming to the conclusion that an action dismissed for improper venue tolls the statute where the new action is brought only eight days after the three year period of limitations applicable to such cases, Justice Goldberg made a lengthy analysis of the legislative history of the Federal Employers' Liability Act, 85 S. Ct. 1053-57. Suffice it to say that the most superficial analysis of the structure of the Labor Management Relations Act itself or the legislative history thereof clearly shows a Congressional design of speed and

dispatch much in conflict with the position that petitioner would have to take to prevail herein. See G.P.O., *Legislative History of the Labor-Management Relations Act*, 1 *et seq.* (1950).

The final case cited by petitioner for the proposition that this Court has declined to apply a state statute of limitations concerns the application of an equity rule involving an action in equity brought to enforce the statutory liability of a stockholder in a federal land bank. *Holmberg* v. *Armbrecht, supra.* The opinion in this case is most revealing since Justice Frankfurter in passing, at 327 U.S. at 395, makes the following observation: "If Congress explicitly puts a limit upon the time for enforcing a right it created, there is an end of the matter. . . . The rub comes when Congress is silent. . . . As to action at law, the silence of Congress has been interpreted to mean that it is a federal policy to adopt the local law of limitation." The Justice then goes on to find that since the action is in equity the Court was required to use a period of limitations only as a guideline, not as a rule of law. A similar observation is made in the annotation in 162 ALR at 725:

> "In the absence of a Federal general statute of limitations, or a provision in any particular Federal statute creating the right, limiting the time of enforcement, the Federal courts in enforcing at law rights created by a Federal statute have generally felt bound by and have applied the state statute of limitations."

It is beyond doubt that a claim for wages, penalties and attorney fees under an Indiana statute is one at law, since the remedy sought is the payment of money, not an accounting as was the case in *Holmberg.*

The authorities cited by petitioner for the proposition that the Court improvises as to a period of limitations when a federal statute contains no such period do not support this contention. In fact, the many cases decided by

this Court and cited above by respondent make it apparent that such is not the case. As observed by the Court below: "The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorney's fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action." (Pet. App. p. 19.)

The Court below was clearly correct in applying the local period of limitations to the claim stated by petitioner, not only because it simply applied the general rule to actions wherein the federal statute contains no period of limitations, but in addition petitioner's own theory of recovery was one of local law as shown by paragraph 10 of the complaint filed in the District Court which reads: "10. That pursuant to the Act of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof and in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due to the employees represented by the plaintiff an amount equal to double unpaid wages which amount is in excess of Eighty Thousand Dollars ($80,000.00)." Petitioner would use Indiana law only where convenient, rejecting it where it would bar its cause of action, yet in a somewhat unusual *non sequitur* reasserting Indiana law (the twenty year statute of limitations) where the period of limitations is long enough to allow it to bring its action.

II.

THERE IS NO CONFLICT AMONG THE CIRCUITS.

On page 7 of the petition, petitioner asserts that there is an increasing body of dispute in litigation over the application of statutes of limitation in cases arising in Section 301. The petitioner cites *Tully* v. *Fred Olsen Motor Service Company,* 134 N. W. 2d 393, a case arising in a Wisconsin state court, and two other cases, *Falsetti* v.

Local 2026, No. 14263 (District Court opinion at 34 F. R. D. 461) awaiting the decision of the Third Circuit, and *Fischbach and Moore, Inc.* v. *International Union of Operating Engineers,* No. 19476 (District Court opinion at 198 F. Supp. 911), awaiting the decision of the Ninth Circuit.

Obviously, any decision in this case could not be in conflict with a decision in any other Circuit since the above cases have not even been decided and the petitioner cites no other Circuit. It is clear that the decision below is not in conflict among other Circuits.

Incidentally, the cases above cited by petitioner are factually distinguishable from the case here where the lower Court herein specifically found that the contracts in question, so far as a statute of limitations is concerned, were oral contracts.

III.

THERE IS NO IMPORTANT FEDERAL QUESTION INVOLVED IN THIS CASE.

The petitioner at page 8 of the petition herein is concerned that "antiquated state labor law theories" might be infused into federal labor law if the lower court's decision is affirmed, and therefore, urges that because of the necessity for uniformity as to the statutes of limitations, an important federal question, is involved in this case.

Petitioner, however, found nothing "antiquated" about asking in addition to vacation pay for the employees in question, for attorneys' fees and statutory penalties as well as liquidated damages under the Indiana statutes which it uses partially, at least, as the basis for its claim filed against respondent herein. The Court below, in effect, found that it was not required to reach a question of federal labor law simply because of the fact that petitioner based its claim not solely on federal labor law or any theory

arising from Section 301 of the National Labor Relations Act, as amended, but rather founded its claim on some rather early Indiana wage statutes. Once this is understood, the lower Court had no choice but to apply Indiana law in all respects to petitioner's claim for relief, since petitioner "frankly recognizes the case as a state action." (Opinion of the Circuit Court, p. 19 of Petitioner's Appendix attached to its Petition herein.) It is clear that to dispose of this matter neither this Court nor the Court below is required to dispose of a federal question, since the primary issue raised by the record herein (under Indiana law what was the applicable period of limitations) requires no formulation concerning federal law. If for no other reason the petition for a writ should be denied.

Finally, the lower Court's decision is not in conflict with the opinions of this Court in such cases as *Textile Workers* v. *Lincoln Mills,* 353 U. S. 448, 77 S. Ct. 912 (1957); *Charles Dowd Box* v. *Courtney,* 368 U. S. 502, 82 S. Ct. 519 (1962); *Local 174, Teamsters* v. *Lucas Flour,* 369 U. S. 95, 82 S. Ct. 571 (1962), to the effect that national uniformity in Section 301 cases is desirable. Assuming only *arguendo,* however, that respondent has raised an issue as to national uniformity, once again it does so by misapplying the law to the facts in this case. At page 10 of its petition, petitioner states: "This Court has long ago ruled that statutes of limitations *so far affect substantive rights as to require that the limitations rule of the jurisdiction creating the substantive rights apply irrespective of the forum involved.*" This rule does not apply here because obviously substantive rights were created by the law of the State of Indiana which did contain a statute of limitations. If it is assumed, *arguendo,* that the claim for wages was created by Section 301 as a new substantive right, wich respondent denies, no statute of limitations is contained in said statute creating such right.

Therefore, the Court below was required under well established principles to look to the Indiana statute of limitations for the applicable limitations period. In this sense, a uniform rule already exists for actions under Section 301 of the National Labor Relations Act, as well as any other federal statute without a specific period of limitations, since the federal Courts uniformly apply the appropriate state statute as interpreted by the state courts involved.

IV.

THE FACTS IN THE RECORD RAISE NO SUBSTANTIAL CONSTITUTIONAL ISSUE.

Petitioner states at page 13 of its petition that the Circuit Court's opinion raises a serious constitutional issue. This is so, according to petitioner, even though the Court below found that petitioner's complaint was founded on Indiana statutes, and under Indiana law a contract partially in writing and partially in parol must be treated, for purposes of a period of limitations, as a parol contract.[2] It is argued at p. 15 of the petition herein that the opinion below violates Article III of the Federal Constitution by giving the federal courts jurisdiction to resolve a question of state law. Even disregarding the fact that under the appropriate federal rule this was what the Circuit Court

2. Although petitioner does not dispute that this is the Indiana rule in its petition, the following authorities show that under Indiana law a contract partly in parol and partly in writing is governed by the six year period of limitations applicable to contracts not in writing: *Michael* v. *Rainer*, 205 N. E. 2d 543, ... Ind. .... (1965); *Board of Commissioners of Marion County* v. *Shipley*, 77 Ind. 553 (1887); *Carskaddon* v. *City of South Bend*, 141 Ind. 596, 39 N. E. 667 (1895); *Moore* v. *Ohl*, 65 Ind. App. 691, 116 N. E. 9 (1917); *Hackleman* v. *Board of Commissioners of Henry County*, 94 Ind. 36 (1884); *Tomilson* v. *Briles*, 101 Ind. 538, 1 N. E. 63 (1885); *Higham* v. *Harris*, 108 Ind. 246, 8 N. E. 255 (1886); 6 Indiana Law Encyclopedia, "Contracts," sec. 51, p. 110; 19 Indiana Law Encyclopedia, "Limitations of Actions," Sec. 22, p. 17.

was required to do on the facts before it, it must be added that in one of the cases most heavily relied upon by petitioner, *Smith* v. *Evening News,* 371 U. S. 195, 83 S. Ct. 267 (1962), this Court found that state courts clearly have jurisdiction over actions arising under Section 301. It would seem, therefore, that the ruling in the *Smith* case clearly supports the decision of the court below in that all the lower court did was decide an issue of state law raised by the pleadings and the facts in the record before it. As to the fact that *Smith* allows state courts to apply federal law to federal questions see the observations in the dissent in this case at 371 U. S. 202-205. It is respondent's position that petitioner's assertion that the lower court's opinion raises a substantial constitutional issue can only be supported by a finding that either the principle of concurrent jurisdiction in state and federal courts be disregarded or that this Court itself was in error in determining that state courts could entertain actions under Section 301. To pose these questions is to make it clear that, in fact, the record herein raises no constitutional issue.[3]

3. It might be stated in passing that at page 11 of its petition the petitioner cites a most recent case decided by this Court, *Republic Steel Corp.* v. *Maddox,* 379 U. S. 650, 85 S. Ct. 615 (1965), and thereby injects into the issues in this case but another ground for denial of its petition. In *Maddox,* this Court reversed an Alabama state court's holding that the plaintiff (Maddox) was entitled to recover for breach of contract on the sole ground that plaintiff had failed to follow the grievance procedure as set forth in the contract between his employer and a labor union, and this even though the employer had gone out of business. The record herein is even more favorable to this respondent than to Republic Steel in the *Maddox* case, since, as shown by Exhibit A attached to petitioner's complaint, the contract between petitioner and respondent provided that "In order to become a matter for adjustment under the grievance procedure, the grievance must be presented within five (5) working days after the employee or group of employees, *or the union* has acquired knowledge of the act which is the basis of the grievance." (Emphasis supplied.) Under the *Maddox* rule, it is clear that there is no reference to anything like petitioner having filed a grievance in the record now before this Court for evaluation. It would seem certain, therefore, that in using *Maddox* as authority in support of its position, petitioner has given this Court authority for a summary denial of its petition.

CONCLUSION.

Since the decision of the Court below is clearly correct and does not conflict with the decisions of this Court or any of the Circuits, and since no important federal question is presented by this case, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY MEMORANDUM FOR PETITIONER

Respondent in its Opposition continues to insist, in the face of this Court's rulings and the limits of Article III of the Constitution, that this suit for vacation pay due under a collective bargaining agreement is a state cause of action grounded in state law. Thus Respondent merely underlines the utter fallacy of the "state rights" premise on which the court below applied the Indiana limitation to this Section 301 suit:

1. For the proposition that this is a state action Respondent cites the lower court's statement that the Complaint in the District Court "seeks not only wages due for vacation

pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action." But the lower court's observation that Petitioner recognized the case as a state action because it pleaded certain state statutes in the Complaint, is without foundation. The Complaint (R. 3a) avers that it is "brought by the plaintiff under the provisions of Section 301 of the Labor Management Relations Act," and that "Jurisdiction of this cause is vested in this Court by virtue of said Act..." The concluding recitation in the Complaint (R. 5a) of Indiana statutes providing for double unpaid wages, merely safeguards the benefit of any additional state remedy, this Court not yet having clarified the extent to which state remedies survive in Section 301 actions. In any event, a 301 suit could not become a state cause of action by virtue of a plaintiff's erroneous belief in that regard. This Court having ruled that Section 301 invokes a "body of federal substantive law" (*Smith* v. *Evening News Assn.*, 371 U.S. 195, 200), a plaintiff's contrary characterization of his federal action would have no operative effect.

2. Respondent disputes the existence of conflict with this Court's rulings calling for uniformity of Section 301 law and declining in analagous contexts to make diverse state limitations periods controlling upon suits under federal statutes. But Respondent's distinctions of this Court's authorities are distinctions without a difference. Thus, only a few months ago this Court in *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, declined to subject FELA actions to the diversity of state savings statutes; even more destructive of uniformity—under a statute whose uniformity purpose this court has repeatedly emphasized—is the ruling herein that Section 301 suits are subject to the differing limitations periods of 50 state jurisdictions.

3. Most noteworthy is the failure of the Opposition to de-

tract from the importance of the federal question presented. On this score the Opposition "denies" (p. 16) that "the claim for wages [in this case] was created by Section 301 as a new substantive right . . ." But this is merely a reiteration of the lower court's erroneous holding that "the question of whether vacation pay is due the workmen here involved is a question of state law." Repetition of that erroneous predicate of the ruling on the merits of the issue at hand cannot detract from the importance of the question presented. Accordingly we submit that this case clearly presents a fundamental federal statutory question which this Court should review to preserve the national uniformity objective of Section 301 of the Labor-Management Relations Act.

Respectfully submitted,

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(6097-0)

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No. 357

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner*,

v.

HOOSIER CARDINAL CORPORATION, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement	3
Summary of Argument	6
Argument	8
I. This Court Should Bar Application of Differing State Standards, and Instead Prescribe Appropriate and Uniform Federal Limitations for Section 301 Actions	12
II. This Suit Was Timely Filed Under the Suggested Federal Limitations Standard	20
III. This Suit Was Timely Filed Even if the Indiana Limitations Should Apply	22
Conclusion	25

Table of Cases

Association of Westinghouse Salaried Employees v. *Westinghouse Elec. Corp.*, 348 U.S. 437	4, 7, 10, 11, 12, 22, 24
Beacon Theatres, Inc. v. *Westover*, 359 U.S. 500	17
Brotherhood of Locomotive Firemen and Enginemen v. *Mitchell*, 190 F. 2d 308 (C.A. 5, 1951)	19
Burnett v. *New York Central R. R.*, 380 U.S. 424	7, 14, 15, 16, 17, 21
Central of Georgia Ry. v. *Jones*, 229 F. 2d 648 (C.A. 5, 1956), *cert. den.*, 352 U.S. 848	19
Charles Dowd Box Co. v. *Courtney*, 368 U.S. 502	13, 23
Cope v. *Anderson*, 331 U.S. 461	14
Garrett v. *Moore-McCormack Co.*, 317 U.S. 239	14
Guaranty Trust Co. v. *York*, 326 U.S. 99	14, 15
Holmberg v. *Armbrecht*, 327 U.S. 392	14, 16, 18, 23
Humphrey v. *Moore*, 375 U.S. 335	17, 19
International Union of Operating Engineers v. *Fischbach and Moore, Inc.*, 350 F. 2d 936 (C.A. 9, 1965)	20

Page

Johnson v. *Hoosier Cardinal Corp.*, 134 Ind. App. 477, 189 N.E. 2d 592 ..... 3, 4, 21
Local 174, Teamsters Union v. *Lucas Flour Co.*, 369 U.S. 95, 102 ..... 8, 13, 14, 24
McAllister v. *Magnolia Petroleum Co.*, 357 U.S. 221 ..... 14, 15, 16
Rawlings v. *Ray*, 312 U.S. 96 14
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 14
Simler v. *Conner*, 372 U.S. 221 17
Smith v. *Evening News Ass'n*, 371 U.S. 195, 200 ..... 4, 6, 10, 11, 13, 14, 16, 24
Steele v. *Louisville & Nashville R. R.*, 323 U.S. 192 19
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 ..... 12, 13, 17, 18, 23
U.E. v. *General Electric Co.*, 43 L.R.R.M. 2822 (U.S. D.C. Mass., 1959) 19
United Steelworkers v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 18
Vandenbark v. *Owens-Illinois Glass Co.*, 311 U.S. 538 21

MISCELLANEOUS

Burns' Ind. Stat. Ann. § 2-602 ..... 5, 22
Burns' Ind. Stat. Ann. § 2-608 23
D. C. Code § 12-201 19
Indiana Act of 1881 (Spec. Sess.) Ch. 38, Sec. 37 (Burns' Ind. Stat. Ann. § 2-601) 5
Section 301, Labor-Management Relations Act, 61 Stat. 156, 29 U.S.C. § 185 ..... 1, 2, 8
Segal, *Digest of Statutes of Limitations in Personal Injury, Death and Allied Actions*, 8 *The Practical Lawyer* No. 4, p. 71 (1962) 19
28 U.S.C. § 1254(1) 2
28 U.S.C. § 2401(a) 18
28 U.S.C. § 2401(b) (FTCA, 2 years) 20
45 U.S.C. § 56 (FELA, 3 years) 19
46 U.S.C. § 688 (Jones Act, 3 years) 19
86 Sup. Ct. 87 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The opinion of the District Court dismissing this suit under Section 301 of the Labor-Management Relations Act was filed on November 12, 1964, and appears at R. 12. The opinion of the Court of Appeals for the Seventh Circuit, issued on June 4, 1965 (346 F. 2d 242), appears at R. 24.

Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit, affirming the District

Court's dismissal of petitioner's suit, were entered on June 4, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). The petition for certiorari was filed on July 22, 1965 and was granted on October 11, 1965. 86 Sup. Ct. 87.

Questions Presented

1. Whether uniform federal timeliness standards rather than the differing norms of state statutes of limitations control suits for the enforcement of collective bargaining agreements under Section 301 of the Labor-Management Relations Act.

2. Whether, if state limitations are controlling, a Section 301 suit to enforce the vacation pay provisions of a written collective bargaining agreement is, for purposes of choosing the applicable state limitation, to be treated as a suit resting on that written agreement or on oral contracts of hire between the employees and the employer.

Statute Involved

Section 301 of the Labor-Management Relations Act, 61 Stat. 156, 29 U.S.C. §185, provides in part:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jursdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> "(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the

acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States . . . ."

Statement

On September 1, 1955 the International Union, UAW, and its Local 145, collective bargaining representative for the employees of the Hoosier Cardinal Corporation of Evansville, Indiana, entered into a three year collective bargaining agreement with the company (Complaint, Exhibit "A," R. 5). Among the usual provisions common to such labor-management agreements was Article VIII governing "Vacations." That Article, providing that "vacations shall be granted on the following basis," set forth four categories of employees with differing formulas for accumulation of vacation pay. Among the provisions of the Article was a clause (R. 7) that "employees who qualified for vacations in the previous year and whose employment is terminated for any reason before the vacation is taken will be paid that vacation at time of termination."

On June 1, 1957, the company terminated the employment of more than one hundred workers whose employment and vacation pay were controlled by the union-company agreement of 1955; but the company did not at that time or thereafter pay to the terminated employees their accumulated vacation pay as required by Article VIII of the agreement (Complaint, Paragraph 7, R. 4). Eight months after this refusal to honor the agreement, on February 21, 1958, the union's attorneys filed a class action for the employees against the company in the Superior Court of Vanderburgh County, Indiana. *Johnson* v. *Hoosier Cardinal Corp.*, Cause No. C-7284 (*infra*, Appendix p. 1). The suit sought recovery of vacation pay under Article VIII of the collective bargaining agreement

between the union and the company (*infra,* Appendix p. 2). At that time, this Court's ruling in *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.,* 348 U.S. 437, precluded resort to the federal courts for collection of the vacation pay due to the employees under the collective bargaining agreement with the company.

On January 21, 1959, the Superior Court of Vanderburgh County ruled that the class action was improper under Indiana law (*infra,* Appendix pp. 9-12). Thereafter, each of the former employees assigned his claim to union representative Frank Kavanaugh, who, on August 7, 1959, filed an amended complaint in the same action in the nature of a representative claim for all the employees (*infra,* Appendix p. 13). However, on September 23, 1959, the Court (*infra,* Appendix pp. 16-18) sustained a demurrer to the amended complaint on the ground that the assignment method of suit is improper under Indiana law. Thereupon, by further amended complaints (*infra,* Appendix pp. 19-26), the union's attorneys reinstituted the original class action. Upon demurrer to the propriety of the suit as a class action (*infra,* Appendix pp. 27-30) the Indiana Superior Court entered a final dismissal of the action on June 3, 1960 (*infra,* Appendix pp. 31-32). An appeal was taken to the Appellate Court of Indiana, and on April 18, 1963, that court affirmed the dismissal of the suit (see *Johnson* v. *Hoosier Cardinal Corp.,* 134 Ind. App. 477, 189 N.E. 2d 592).

Meanwhile, in *Smith* v. *Evening News Ass'n,* 371 U.S. 195, this Court had effectively overruled its earlier *Westinghouse* restriction, and opened the door to Section 301 suits in federal court for such employee benefits under collective bargaining agreements as the vacation pay involved in this case. Accordingly, on April 8, 1964, eleven months after the Indiana dismissal became final, the union filed this Section 301 action in the United States District Court

for the Southern District of Indiana for the recovery of the vacation pay due the former employees of the company.

The company interposed the defense of statute of limitations (R. 8) urging that nearly seven years had passed since the employee terminations had vested the vacation pay rights claimed under the contract, and pleading the Indiana Act of 1881 (Spec. Sess.) Ch. 38, Sec. 37 (Burns' Ind. Stat. Ann. § 2-601), which provides that suits must be commenced within six years on "contracts not in writing." The company asserted that the union's suit for wages due, while nominally based upon the vacation pay provisions of the written collective bargaining agreement, was actually grounded upon the individual oral hiring agreements between the employees and the company. As a suit "in effect . . . under the separate individual [oral] employment contracts of the former employees" (defendant's trial court brief, p. 4), the company urged that the 6-year statute rather than the 20-year Indiana statute governing suits on "contracts in writing" (Burns' Ind. Stat. Ann. § 2-602) applies to this action.

On November 12, 1964, the District Court filed an opinion (R. 12) upholding this company contention, and dismissing the union's complaint. On appeal to the Court of Appeals for the Seventh Circuit, the union's principal argument was that Indiana statutes of limitations do not apply to and cannot bar a federal suit under Section 301. On June 4, 1965, the court below issued its opinion (R. 24) holding that the Indiana statutes of limitations govern the time for commencing this Section 301 action. In reaching that result, the court below holds that the suit is "actually a case by an agent [the union] to enforce the rights of individual workmen," and that "the question of whether vacation pay is due the workmen here involved is a question of state law." And the court also upholds the dis-

missal of the suit under the six-year Indiana statute governing "contracts not in writing," on the theory that although the vacation pay provisions of the collective bargaining agreement are in writing, the action is actually "based upon the [oral] contracts of employment between the individual employees and defendant" (R. 26-28).

This Court has granted review on the question of the applicability of local limitations to Section 301 suits and on the question whether, assuming applicability of local limitations, Section 301 actions may be viewed for the purpose of choosing the appropriate state limitation as if predicated on individual contracts of hire rather than the written collective bargaining agreement.

Summary of Argument

A

This Court should bar application of differing state standards, and instead prescribe appropriate and uniform federal limitations for Section 301 actions. Where, as here, Congress has set no limitations period for the assertion of a federal statutory right, this Court has sometimes looked to analogous state limitations to provide a federal standard; but this Court has *declined* to adopt state limitations where to do so would interfere with federal supremacy or with a necessary uniformity in the vindication of uniquely national rights. This Court having required under Section 301 what it has characterized as "a uniform body of federal substantive law" (*Smith* v. *Evening News Ass'n*, 371 U.S. 195, 200), it becomes clear that the applicable statute of limitations must also be a matter of uniform law, without state-by-state differentiation.

Application of state statutes of limitations to Section 301 actions would result in aggravated diversity, since limita-

tions periods for contract actions provided in the several states vary from as little as 60 days to as long as 20 years. Not only would the adoption of such diverse state limitations promote disharmony and forum shopping, but extraordinary difficulties would also arise with respect to antiquated state labor law theories which would tend to creep back into Section 301 through the statute of limitations loophole. Under these circumstances, we cannot believe that this Court would adopt differing state limitations under Section 301 and thus sanction the diversity which it so recently avoided in *Burnett* v. *New York Central R.R.*, 380 U.S. 424, by fashioning its own FELA limitations-tolling norm. Especially is diversity to be avoided here where there are established principles available for fashioning uniform timeliness rules for each of the major categories of Section 301 actions.

B

This suit was timely filed under the suggested federal limitations standard. The same tolling principle this Court adopted in *Burnett* necessarily applies to limitations standards this Court adopts for Section 301 actions. In view of the five-year state court litigation, the suit at bar was timely filed under any limitation period not less than two years in duration; by application of the *Burnett* rule, the limitations in this case ran for only eight months before tolling commenced and eleven months after it ended. Such a tolling is particularly appropriate in the present case where it was this Court's now-overruled *Westinghouse* doctrine which occasioned the protracted and unsuccessful effort to invoke the Indiana jurisdiction.

C

This suit was timely filed even if the Indiana limitations should apply. The court below agreed that the Indiana limitation applicable to suits on "contracts in writing" is 20 years, but it rejected that period in favor of the Indiana 6 year limitation applicable to "contracts not in writing." Holding that the present action was one based on oral contracts of hire rather than the written collective bargaining agreement, it applied the shorter state statute of limitations.

But, even if local limitations apply, the choice of the applicable limitation is nevertheless a federal question both under this Court's general limitations authorities and its Section 301 decisions. If the state statute of limitations is to be absorbed in federal law, it cannot be that the choice of the state statute to be federally absorbed can rest upon principles contrary to the substantive law of the federal statute upon which the local limitations is judicially engrafted. This Court has stated in terms dispositive of the present question that under Section 301 "incompatible doctrines of local law must give way to principles of federal labor law." *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95. This being a suit on the written collective agreement rather than on oral contracts of hire, Indiana's 20-year limitations for suits on a written contract would obviously apply.

Argument

The principal issue presented for this Court's resolution is whether uniform federal limitations standards rather than the differing local limitations shall govern suits under Section 301 of the Labor-Management Relations Act. In Point I of the Argument we urge the Court to bar the application of differing state standards and instead prescribe appropriate and uniform federal limitations governing

Section 301 actions. In Point II we make clear that this suit was timely filed under the suggested federal standard. In Point III we demonstrate that this action was timely filed even should the Indiana limitations apply. But before addressing ourselves to these points we believe it appropriate preliminarily to review the manifest invalidity of the "state cause of action" theory upon which the court below rested its decision in the instant case.

Whichever way this Court may resolve the central question pending before it, it is clear that the rationale of the court below is wholly unacceptable both as a predicate for the rejection of uniform federal limitations under Section 301 and as a basis for the result reached below. The lower court opines that while this suit is brought on the vacation pay provisions of the collective bargaining agreement, the action is "actually" grounded on the individual contracts of hire between workers and the company (R. 26). From that premise the court finds that the action is only one by the union as an agent suing under subsection (b) of Section 301 and *not* subject to subsection (a). And the capstone of this syllogism is the court's conclusion that the contract violation alleged in the suit is purely "a question of state law," which Congress has directed federal courts to adjudicate without recourse to any federal substantive law or uniformity on such matters as limitations (R. 26-27).[1]

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[1] The court below seeks in part to support its "state cause of action" ruling on the ground that the Complaint in the District Court "seeks not only wages due for vacation pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action." But the lower court's observation that petitioner recognized the case as a state action because it pleaded certain state statutes in the Complaint, is without foundation. The Complaint (R. 3) avers that it is "brought by the plaintiff under the provisions of Section 301 of the Labor Management Relations Act," and that "Jurisdiction of this cause is vested in this Court by virtue of said Act . . ." The concluding recitation in the Complaint (R. 5) of Indiana

Of course, the central and crucial mistake in the lower court's rationalization is its view that this suit is "based on the contracts of employment between the individual employees and defendant," rather than on the provisions of the collective bargaining agreement. True, if there had been no employees there would have been no collective bargaining agreement. But to say that because the vacation pay provisions of the bargaining agreement secured employee rights the suit is "based on" the individual contracts of hire, rather than on the collective bargaining agreement, is to affirm *generally* that Section 301 actions are not based upon collective agreements. After all, with but few exceptions (e.g., the "check-off"), the vast majority of collective bargaining agreement provisions do secure employee rights, not union rights.

In any event, it is too late in the day to make the collective agreement subservient to the "individual contracts of employment" and transmute a Section 301 suit into a common-law action for wages. It was the same concept of rights arising from "separate hiring contracts between the employer and each employee" which troubled this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U.S. 437, 464, and which the Court recently rejected in *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 198-200. *Evening News* made clear that no immutable line of demarcation exists between individual employee rights and union rights inhering in collective bargaining agreements:

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statutes providing for double unpaid wages, merely safeguards the benefit of any additional state *remedy*, this Court not yet having clarified the extent to which state remedies survive in Section 301 actions. In any event, a Section 301 suit could not become a state cause of action by virtue of a plaintiff's erroneous belief in that regard. This Court having ruled that Section 301 invokes a "body of federal substantive law" (*Smith* v. *Evening News Ass'n*, 371 U.S. 195, 200), a plaintiff's contrary characterization of his federal action would have no operative effect.

> "The concept [of *Westinghouse*] that all suits to vindicate individual employee rights arising from a collective bargaining contract should be excluded from the coverage of § 301 has thus not survived. The rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based."

Equally vulnerable is the lower court's ruling that this suit is under Section 301(b) by the union "in behalf of the employees whom it represents," and not subject to Section 301(a) "for the simple reason that no one contends that the defendant owes any wages to the union." This is certainly novel distortion of this Court's rejection in *Evening News* of the *Westinghouse* ruling which had read wage suits out of Section 301(a). Faced with *Evening News*, the court below cannot avoid recognition of Section 301 jurisdiction, but now purports to find it only in a procedural subsection which this Court has never viewed as a separate grant of substantive jurisdiction to the federal courts.

Finally, by its "individual contract" rationale the court below *creates the very problem under Article III* of the Constitution which *Westinghouse* had sought to avoid. The court below concludes that the Indiana statute of limitations applies because this vacation pay suit presents only "a question of state law" for which Congress has provided a naked federal forum in § 301(b). But if Congress has thus created federal jurisdiction solely to resolve a question of state law, the court below has validated the very infirmity

which prompted this Court in *Westinghouse* to *reject* federal jurisdiction, and which it definitively avoided after *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, by holding that Section 301 invokes "federal substantive law."

In sum, the "state law" rationale of the court below is wholly erroneous; whatever else may be said for adopting the differing state limitations periods in Section 301 litigation, the lower court's predicate for that result will not suffice. And on a *de novo* assessment by this Court of the issue at hand, it is clear that the only result consistent with this Court's authorities is the adoption of uniform national limitations norms governing suits under Section 301.

I

THIS COURT SHOULD BAR APPLICATION OF DIFFERING STATE STANDARDS, AND INSTEAD PRESCRIBE APPROPRIATE AND UNIFORM FEDERAL LIMITATIONS FOR SECTION 301 ACTIONS.

This case presents the familiar problem of timeliness in the absence of Congressional specification. When Congress has set no limitations period for the assertion of a federal statutory right, this Court has sometimes looked to analogous state limitations to provide a federal standard; but this Court has *declined* to adopt the state limitations standard where to do so would interfere with federal supremacy or with a necessary uniformity in the vindication of uniquely national rights. The central question in the present case is whether in the enforcement of rights under Section 301 of the Labor-Management Relations Act, courts may apply differing local limitations periods without frustrating supremacy and uniformity goals underlying this federal statute.

1. In resorting to diverse state limitations, the lower court disregards this Court's decisions requiring uniform federal law under Section 301. In *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, this Court definitely ruled that courts are to fashion a body of substantive federal law in implementation of the statute. Subsequently, in *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, the Court extended the substantive law of Section 301 to state litigation. And in *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95, 102, it ruled that in § 301 cases *"incompatible doctrines of local law must give way to principles of federal labor law."* In the latter decision, which rejects the survival of "individualized local rules" in litigation of collective bargaining agreement rights, this Court emphasized (at p. 103) the underlying uniformity goal, in terms applicable to the present question:

> "Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy. More important, the subject matter of § 301(a) 'is peculiarly one that calls for uniform law.' . . . The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. . . ."

This Court having thus required under Section 301 what it has characterized as "a uniform body of federal substantive law" (*Smith* v. *Evening News Ass'n*, 371 U.S. 195, 200), it becomes clear that the applicable statute of limitations must also be a matter of uniform law, without state-by-state differentiation. This Court has long ago ruled that

statutes of limitations *so far affect substantive rights as to require that the limitations rule of the jurisdiction creating the cause of action apply irrespective of the forum involved.* Thus, when federal courts enforce state rights, state limitations apply (*Guaranty Trust Co.* v. *York,* 326 U.S. 99), and when state courts enforce federal rights, then federal limitations apply (*Burnett* v. *New York Central R. R.,* 380 U.S. 424; *McAllister v. Magnolia Petroleum Co.,* 357 U.S. 221; cf. *Garrett* v. *Moore-McCormack Co.,* 317 U.S. 239). It is thus clear that the choice of the appropriate limitation for suit under Section 301 is itself a question of federal law which invokes no considerations of deference to state jurisdiction.

It follows that the requirement of uniformity emphasized in *Lucas Flour* and *Evening News* precludes the adoption of differing state limitations periods for Section 301 litigation. Cf. *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650. True, when Congress has provided no limitation this Court has frequently applied analogous state limitations to federal actions. See e.g. *Cope* v. *Anderson,* 331 U.S. 461; *Rawlings* v. *Ray,* 312 U.S. 96. But such "absorption of state statutes of limitations" is merely a matter of policy and convenience. *Holmberg* v. *Armbrecht,* 327 U.S. 392, 395. Accordingly, this Court has *declined* to adopt the local limitation when to do so would impair federal supremacy (*id*) or the necessary uniformity in implementation of such inherently national rights as arise in maritime law or interstate commerce (*Burnett* v. *New York Central R. R.,* 380 U.S. 424; *McAllister* v. *Magnolia Petroleum Co.,* 357 U.S. 221).[2]

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[2] The uniformity consideration which precludes adoption of varying state limitations to fill the federal void, is highlighted in the concurring opinion of Mr. Justice Brennan in *McAllister, supra,* in terms applicable in the present setting (357 U. S. at 228-230): ". . . I do not believe that the absence of specific directions from Congress leads necessarily to the result that state statutes of limitations should apply in cases

Certainly, if uniformity precludes application of differing state limitations under FELA, as this Court recently held in *Burnett*, the same result must obtain under Section 301. Subjecting Section 301 litigation to the diversity of state limitations would create the disharmony and promote resort to the forum shopping which this Court has sought in *Burnett* and *McAllister* to avoid under analogous enactments.[3]

The diversity here would be particularly aggravated, since limitations periods for contract actions provided in the several states vary from *as little as 60 days to as long as 20 years*. See "State Statutes of Limitations Governing Contract Actions," Appendix B to the Petition for Certiorari herein. And this is an area of litigation where the frequency of overlapping jurisdictions renders the possibility of forum shopping quite real. Today, collective bargaining agreements in major industries regularly transcend state borders, so that a company or union will often have a number of available jurisdictions for litigating rights under a single collective bargaining agreement.

Not only would the adoption of diverse state limitations thus promote disharmony and forum shopping, but extraordinary difficulties would then arise with respect to anti-

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of this sort . . . . the three-year limitation on the Jones Act remedy, 45 U.S.C. §56, is the ready and logical source to draw upon for determining the period within which this federal right may be enforced. This period should be applied in an action for unseaworthiness brought in a state court, just as it would be applied by the state courts in actions brought under the Jones Act, *Engel* v. *Davenport, supra.* Such a result would be in harmony with the practice in federal admiralty courts of applying state statutes of limitations in enforcing state-created rights. *Western Fuel Co.* v. *Garcia*, 257 U.S. 233. The alternative of subjecting the parties' rights to the variant state statutes of limitations and the consequent uncertainty of legal obligation would inject an unnecessarily sporting element into the affairs of men. Cf. *Guaranty Trust Co.* v. *York*, 326 U. S. 99. The mischief to be avoided is the possibility of shopping for the forum with the most favorable period of limitations."

[3] Cf. this Court's rejection in *Guaranty Trust Co.* v. *York*, 326 U. S. 99, 109, of intra-state forum shopping.

quated state labor law theories which would tend to creep back into Section 301 through the statute of limitations loophole. For instance, after making limitations a matter of state law, the court below determined that the Indiana limitations statute on oral rather than written contracts applies, because Indiana would treat the suit as a common-law action for wages upon an oral agreement for hire rather than as collective bargaining agreement litigation. Yet that theory, whether or not consistent with Indiana law, certainly violates this Court's clear pronouncement in *Evening News*. See *supra*, p. 11. Thus if the court below is *correct* in applying local law philosophy of labor relations for purposes of choosing the applicable state limitations period, there is then created a dual and conflicting body of labor law under Section 301. On the other hand, if, as we believe (see *infra*, p. 23), the court below was *mistaken* in adopting antiquated Indiana labor law theory in its choice of a limitation period, then the adoption of local limitations under § 301 creates the burden that courts must discount the local law to the extent that its choice or application conflicts with federal labor law principles. In either event, only confusion and conflict can result if Section 301 is subjected to the variant state limitations periods.

It is clear, we submit, that this Court should fashion uniform federal limitations applicable to Section 301 actions. Recourse to varying state limitations when Congress has prescribed no limitation for a federal cause of action is at best a matter of convenience. In such cases as *Holmberg* and *McAllister* this Court found such resort to state law to fill the federal void to be inconvenient and erroneous. Only this year the Court declined in *Burnett* to apply the differing state norms on tolling of limitations to fill the void in the FELA limitations provision, because of

the same uniformity objective which it has so strongly emphasized in its decisions construing Section 301. See *supra,* pp. 13 to 14. We cannot believe that this Court would adopt differing state limitations under Section 301 and thus sanction the diversity and uncertainty which it so recently avoided in *Burnett* by fashioning its own FELA limitations-tolling norm.

2. Moreover, there are recognized principles available for fashioning uniform federal Section 301 limitations. These may be established in the same manner as other substantive law which this Court in *Lincoln Mills* relegated to judicial elaboration based on underlying federal policy, and much as equity courts have devised timeliness standards under the malleable doctrine of laches. For this purpose, it is appropriate to consider separately the major categories of Section 301 litigation: damage suits for breach of contract, injunctive actions, arbitration cases, and unfair representation litigation of the type represented by *Humphrey* v. *Moore,* 375 U.S. 335.[4] While not now necessary of definition, the Court may want to be assured that workable standards are in fact available for the application of uniform federal limitations.

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[4] Our view that Section 301 suits should for purposes of the appropriate limitation be treated differently depending upon the basic nature of the action, finds analogical support in this Court's decisions in *Beacon Theatres, Inc.* v. *Westover,* 359 U.S. 500 and *Simler* v. *Conner,* 372 U.S. 221. There the Court declined to prescribe a single rule under the Federal Declaratory Judgment Act as to the necessity of a jury trial, and instead made the "basic character" of the suit determinative on that subject. The differentiation between essentially common law and essentially equitable actions which this Court has made controlling in Declaratory Judgment Act cases on the right to a jury, is the same differentiation which we suggest this Court should make controlling here on the issue of limitations. Section 301 suits sounding in equity should be covered by the principle of laches, while those more in the nature of ordinary contract damage actions should be governed by uniform time limitations.

i. Perhaps the easiest limitations norm is the one pertinent to such a case as the present one—a suit for damages caused by breach of a collective agreement. Such suits most resemble the common law breach of contract action, and a distillation of the prevailing state limitations governing contract actions provides a guide for the creation of a Section 301 norm. Examination of Appendix B to the Petition for Certiorari—"State Statute of Limitations Governing Contract Actions"—shows six years as the median period on contract actions in the states (excluding suits on sealed contracts and on oral contracts, which would be highly unusual in the area of collective bargaining agreements). That is also the standard which Congress has approved for contract suits in the Court of Claims (28 U.S.C. § 2401 (a)) against the United States. As we indicate hereafter (*infra*, p. 20), this suit was brought well within the six year federal norm here suggested if the Court applies the same savings rule it applied in *Burnett* to toll limitations during the earlier pendency of state litigation which was dismissed on procedural grounds.

ii. Nor should there be any difficulty about Section 301 suits seeking injunctive relief rather than damages for breach. This Court's ruling and observations in *Holmberg* make clear that in federal equity actions, when Congress has provided no limitations period, this Court will prescribe the equity doctrine of laches to govern the question of timeliness.

iii. The same result, we submit, should obtain in Section 301 cases involving arbitration of collective bargaining agreements. In suits to compel arbitration (such as *Lincoln Mills*) or suits to enforce arbitral awards (such as *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593), the equity power of the court is being invoked.

Once again, therefore, the rule of laches appears appropriate for application to such Section 301 actions. See *U.E.* v. *General Elec. Co.*, 43 L.R.R.M. 2822 (U.S.D.C. Mass., 1959).

iv. Another significant category of suits arises from such cases as *Humphrey* v. *Moore*, 375 U.S. 335, wherein individual employees sue employers and unions in Section 301 actions and assert that the union has unfairly represented their interests with respect to the making or enforcement of a collective bargaining agreement. While the *remedy* sought in such cases addresses itself to the union-employer contract, the *predicate* of these actions is actually the claim of unfair representation, under the right first enunciated by this Court in *Steele* v. *Louisville & Nashville R. R.*, 323 U.S. 192. The decisions have treated the claim for specific relief in such cases as equitable in nature, and have accordingly declined to apply any set time limitation thereto. See *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell*, 190 F. 2d 308 (C.A. 5, 1951); *Central of Georgia Ry.* v. *Jones*, 229 F. 2d 648 (C.A. 5, 1956), *cert. den.*, 352 U.S. 848. On the other hand, the money damage claims in unfair representation cases have been subjected to brief limitations by analogy to state limitations governing suits for injury to the person or rights of another. *Id.* The normal state limitations period governing suits for injury to the person approximates two to three years.[5] Among these is the Congressional enactment for the District of Columbia, D.C. Code § 12-201. It may also be noted with respect to Section 301 unfair representation suits, that most Federal tort limitations are within the two-to-three year range. See 45 U.S.C. § 56 (FELA, 3 years); 46 U.S.C. § 688 (Jones Act, 3 years);

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[5] See Segal, *Digest of Statutes of Limitations in Personal Injury, Death and Allied Actions*, 8 *The Practical Lawyer* No. 4, p. 71 (1962).

28 U.S.C. § 2401 (b) (FTCA, 2 years). These relatively short limitations for Federal tort suits are consistent with the historical tradition of brief limitations in tort actions. From these guidelines we are confident that courts can fashion appropriate limitations norms governing damage claims in Section 301 actions alleging union unfair representation in the making or enforcement of the collective bargaining agreement.[6]

It is not presently necessary to determine all the guidelines which may be appropriate in the elaboration of uniform federal limitations applicable to Section 301 actions. For now it is enough that uniform timeliness standards are capable of judicial elaboration, and that they are preferable to application of differing local limitations in Section 301 litigation. We ask this Court so to hold, and we demonstrate in the next section of our Argument that this case was timely filed and should be remanded to the District Court for trial.

II

THIS SUIT WAS TIMELY FILED UNDER THE SUGGESTED FEDERAL LIMITATIONS STANDARD.

Should this Court adopt, as we urge above, a uniformity principle and reject state-by-state variation of the limitations periods for Section 301 suits, it seems clear from the

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[6] A related issue not now before this Court concerns the limitations periods which may apply to suits under Section 303 of the Act. In the absence of a Congressionally prescribed limitation, the Ninth Circuit recently decided to apply the California limitation in such a case. *International Union of Operating Engineers* v. *Fischbach and Moore, Inc.*, 350 F. 2d 936 (C.A. 9, 1965). Since suits under Section 303 are based on the same secondary boycott prohibitions which constitute unfair labor practices under Section 8(b)(4) of the Act, resort to the six-month limitation for charging a violation of that provision before the National Labor Relations Board would appear a more appropriate standard—one which would be uniform throughout the nation and carry out the manifest Congressional purpose.

tolling rule in *Burnett* v. *New York Central R. R.*, 380 U.S. 424, that the action presently before the Court was timely filed. In *Burnett* this Court recently found the application of varying state savings statutes to FELA actions disruptive of the necessary uniformity Congress sought to promote by the enactment of that statute. Accordingly, it held that where part of the normal limitations period was consumed by litigation dismissed on procedural grounds—in that case because of improper venue—the limitations period was tolled from the commencement of the litigation to the date when its dismissal became final. In terms as clear and indeed even more clear than those to which it gave emphasis in its recent *Burnett* decision with respect to the FELA, this Court has emphasized the uniformity objective behind Section 301. See *supra*, p. 13. Accordingly, we submit that the same tolling principle this Court adopted in *Burnett* necessarily applies to limitations standards this Court approves for Section 301 actions. It follows that this suit was timely filed, in view of the five-year tolling occasioned by the previous state litigation dismissed on procedural grounds. See Appendix, *infra*, pp. 1 to 32.[7]

Thus, under the *Burnett* rule, if a tolling commenced by virtue of the Indiana litigation, the running of the limitations period was suspended eight months after the accrual of this cause of action, by the filing of the state suit in *Johnson* v. *Hoosier Cardinal Corp.* on February 21, 1958. More-

[7] Respondent has suggested that the tolling contention made herein comes too late, not having been raised below. But there is no jurisdictional bar to this Court's consideration of additional grounds for the same contention of timeliness which petitioner made below. Moreover, this Court's decision earlier this year in *Burnett* changed existing law and created a new federal rule with respect to the tolling of limitations on federal causes of action. Petitioner was not required to anticipate this Court's *Burnett* ruling, and is entitled now to urge the *Burnett* rule as dispositive of the narrow question presented. See *Vandenbark* v. *Owens-Illinois Glass Co.*, 311 U.S. 538.

over, the federal suit presently before this Court was filed eleven months after the finality of the judgment of the Appellate Court of Indiana affirming the dismissal, on procedural grounds, of that action.[8] Thus some five years was consumed by the state litigation, and the limitations period actually ran for only nineteen months. Accordingly, *this suit was timely filed under any limitations period not less than two years in duration,* since by application of the *Burnett* rule limitations ran for only eight months before tolling commenced and eleven months after it ended. Such a tolling is particularly appropriate in the present case where it was this Court's now-overruled *Westinghouse* doctrine which occasioned the protracted and unsuccessful effort to invoke the Indiana jurisdiction.

III

THIS SUIT WAS TIMELY FILED EVEN IF THE INDIANA LIMITATONS SHOULD APPLY.

We have emphasized the necessity for federal limitations norms under Section 301, and are confident that this Court will agree with our presentation on that score. But if the Court should adopt a contrary view, the suit presently before the Court was nevertheless timely filed even under the Indiana limitations statutes.

On this score, the court below agreed that the Indiana limitation applicable to suits on "contracts in writing" is twenty years—Burns' Ind. Stat. Ann. §2-602; but the court rejects that period in favor of the Indiana six year limitation applicable to "contracts not in writing." To

[8] The opinion and judgment of the Appellate Court of Indiana affirming the dismissal of the state suit were issued on April 18, 1963, and became final twenty days thereafter under Rule 2-22 of the Indiana Supreme Court. This suit was filed on April 8, 1964.

reach that result the court declares that this action is actually "based upon the contracts of employment between the individual employees and defendant," and that there is no evidence that these employment contracts were ever reduced to writing (R. 28). Stating that it is "under these employment contracts that the present action was brought," the court concludes that the six year statute governing suits on oral contracts applies.[9]

But even if local limitations apply, the choice of the applicable limitation is nevertheless a federal question both under this Court's general limitations authorities and its Section 301 decisions. Thus, this Court emphasized in its leading analysis in *Holmberg* v. *Armbrecht*, 327 U.S. 392, 395, that in appropriate circumstances "it is federal policy to adopt the local law of limitation," but emphasized that "the implied absorption of State statutes of limitations within the interstices of the federal enactments is a phase of fashioning remedial details where Congress has not spoken but left matters for judicial determination . . . ." It cannot be that the choice of the state statute to be federally absorbed can rest upon principles contrary to the substantive law of the federal statute upon which the local limitations is judicially engrafted. That is also the teaching of this Court's Section 301 authorities. As this Court noted in *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 506-7, *Lincoln Mills* recognized that " 'state law . . . may be resorted to in order to find the rule that will best effectuate the federal policy,' but emphasized that '[a]ny state law

[9] Petitioner did not urge below as an alternative argument under the Indiana limitations the timeliness of the suit under the Indiana savings statute. That statute—Burns' Ind. Stat. Ann. § 2-608—tolls the running of limitations for a period of five years folowing dismissal of a timely action other than on its merits. Trial counsel for petitioner deemed that Indiana provision inapplicable in this case, and we do not suggest that it could properly be invoked here, particularly since *Burnett* rejected the applicability of state savings statutes to federal causes of action.

applied . . . will be absorbed as federal law' . . . ." And in *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95, this Court stated in terms dispositive of the present question that under Section 301 "incompatible doctrines of local law must give way to principles of federal labor law."

It follows that the "individual contract of employment" rationale of the court below is an erroneous predicate for application of the Indiana oral contract limitation. As we have earlier indicated (*supra*, pp. 10-11), the "individual contract of employment" theory, intimated by this Court's opinion in *Westinghouse*, was rejected by this Court in *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 198-200. Moreover, unlike the general claim for wages involved in *Westinghouse*, this suit is predicated upon the express vacation pay provisions of the written collective bargaining agreement (R. 5). Nor is there any mention in the Complaint (R. 3) of any individual contracts of employment as a predicate of the suit.

Thus, either as an inference of law or an assertion of fact the lower court's "individual contract of employment" rationalization is erroneous. If taken as an inference of law, it is repelled by this Court's decision in *Evening News* rejecting the *Westinghouse* rationale. If deemed to be an assertion of fact, it is repelled by the vacation pay provisions of the written collective bargaining agreement (R. 5). Accordingly, even if the local statutes were to be applied in determining the limitation period applicable to this case, Indiana's twenty-year limitation would govern since this suit rests exclusively on a written collective bargaining agreement.

Conclusion

For the foregoing reasons it is submitted that the judgment below should be reversed.

Respectfully submitted,

JOSEPH L. RAUH, JR.,
JOHN SILARD,
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Indianapolis, Indiana

APPENDIX

APPENDIX

Filed Feb. 21, 1958, s/ Bert Reed, Clerk.

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY

Cause No. C-7824

STATE OF INDIANA,
County of Vanderburgh, ss:

KENNETH H. JOHNSON, RAYMOND F. FALLEN, JUANITA M. MILLER, DELORES ESTHER SCHMIDT, BERTHA COLBERN, NORMAN HOOE, WALTER DUNN, WILLIE H. SCHNEIDER, AS INDIVIDUALS AND AS REPRESENTATIVES OF A CLASS, *Plaintiffs*,

vs.

HOOSIER CARDINAL CORPORATION, *Defendant*

COMPLAINT

Come now the plaintiffs, for themselves and others similarly situated, the members of a class who are very numerous, being more than one hundred in number, and for cause of action state:

1. That each of the named plaintiffs prior to the beginning of this action has been an employee of the defendant corporation, Hoosier Cardinal Corporation;

2. That each and all the named plaintiffs are members of a class of former employees of defendant corporation and that the members of said class are united in interests; that the members of said class are too numerous, being more than one hundred in number, to be before this Court; that the named plantiffs fairly represent the interests and rights of the class and this Court can ajudicate the rights of all the members of this class fairly and justly in this action and through these representatives;

3. That the defendant is a corporation organized under the laws of the State of Indiana;

4. That on or about the 1st day of September, 1955, the plaintiffs by their collective bargaining representative, United Automobile, Aircraft and Agricultural Implement Workers and Local 145 thereof and the defendant corporation by its officers, entered into an agreement, a copy of which is filed herewith and made a part of this complaint and is marked "Plaintiffs' Exhibit 1;"

5. That as part of the compensation of said employees, Article VIII of said agreement guarantees vacation wages to all employees who have either worked at least 1000 hours during the preceeding twelve months or who have certain seniority rights as described in Article VIII; that said vacation pay is to be based on the average wages of each employee during the preceeding twelve months;

6. That prior to the 1st of June, 1957 and since the 1st of January, 1957 the named plaintiffs and each member of the class of said former employees which said plaintiffs represent have earned wages according to said Article VIII in varying amounts all as shown in Plaintiffs' Exhibit 2, which is now filed and made a part of this complaint;

7. That on or about the 1st day of June, 1957, defendant discontinued the employment of the named plaintiffs and the employment of all the members of the class which said employees represented, but defendant has consistently refused to pay over to said plaintiffs or to any members of the class represented herein any of the accumulated and accrued wages which are now due and owing;

8. That the pay records of plaintiffs and each member of the class represented herein are in the possession and control of the defendant; that plaintiffs have no access to said records;

9. That plaintiffs and the members of the class herein are without accurate records to determine the exact amount or amounts of wages which they have earned from said defendant; that according to their knowledge and belief, said wages now owing to all the plaintiffs and the members of the class are in the amount of Forty Thousand Dollars, ($40,000.00), all as shown by Plaintiffs' Exhibit 2;

10. That pursuant to the Acts of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof, in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due the plaintiffs and the members of the class they represent an amount equal to double the unpaid wages, which amount is Eighty Thousand Dollars, ($80,000.00);

11. That defendant corporation is in imminent danger of insolvency and has in fact discontinued many of its operations in this state; and that defendant has transferred many of its assets to the Mimosa Corporation in South Carolina and beyond the jurisdiction of the Indiana courts; that defendant's assets remaining in the jurisdiction of the Indiana courts are now advertised for sale; that all security for the protection of these plaintiffs' liens for wages is in danger of dissipation and distribution; that unless said remaining assets are impounded or otherwise protected from dissipation and distribution, the plaintiffs herein and all the members of the class represented by them will be prevented from achieving any practical satisfaction of their claims;

12. That it will be to the best interests of plaintiffs and the members of the class which they represent and all creditors of the defendant corporation to have a receiver appointed for said defendant corporation to conduct and carry on the business of said defendant corporation and to preserve and distribute the assets thereof;

13. That the defendant corporation is now threatened with a multiplicity of law suits and plaintiffs and the members of the class which they represent have no adequate remedy at law.

WHEREFORE, the plaintiffs ask for judgment against the defendant corporation in the amount of Forty Thousand Dollars, ($40,000.00) with liquidated damages in the amount of Eighty Thousand Dollars ($80,000.00), together with a reasonable fee for plaintiffs' attorney, that the plaintiff recover costs of the defendant, and further asks that this Court appoint a receiver for the property and assets of the said defendant corporation with the usual powers and authority conferred upon a receiver in such cases and that

this Court order that this matter be set down for hearing for the appointment of a receiver and for all other relief right and proper.

/s/ LYNNVILLE G. MILES,
LYNNVILLE G. MILES AND DANIEL F. CUMMINGS,
Attorneys for Plaintiffs.

PLAINTIFFS' EXHIBIT 1

(1955 collective bargaining agreement between United Automobile, Aircraft and Agricultural Implement Workers and its Local 145 and Hoosier Cardinal Corporation.)

Plaintiffs' Exhibit 2

Name of Employee	Number of Hours Worked From Jan. 1 to June 1, 1957	Average Rate of Pay
Kenneth H. Johnson	1200 plus	$2.17
Ollie Nunn	838.88	1.68
Dale Sanders	1200	1.78
Lila Gish	600	1.78
Elmer Emmerson	640	2.16
Gusta Genter	1200	1.68
Thelma Mayse	600	1.76
Joseph Stippler	900	1.69
Beatrice Browning	640	1.77
Mary Decker	1100	1.96
Ivan Newcomb	1000 or more	1.96
William Gish	1000 or more	1.80
Marie Nieten	700	1.78
Norma Erwin	560	1.96
Ada Putko	640	1.78
Doris Emmerson		1.78
Lyman Hendershott	1300	1.80
Beulah Faye Hendershott	500 or more	1.67
Robert Powers	600	1.78
Raymond F. Fallen	1100	2.66 and 1.67
George W. Dunn	1150	1.98
Bertha Cauebun	1300	1.96
Kenneth M. Wilson	1300	1.89
Leroy Gardner	over 1000	2.11
Juanita M. Miller	1020	1.96
Frank L. Maidlow	1100	1.67
Katherine P. Yaser	1000	1.76
Mary L. Dexter	between 500 and 600	1.76
Carl L. Mall, Jr.	1100 plus	2.33
Lillian M. Barth	620	1.66
Warren W. Dimmett	1048	1.68
Elizabeth Runau	700	1.78
Edwin J. Firth	1225	1.96
James H. Williams	1220	1.96
Thomas Lee Culley	over 1000	2.31
Delores Esther Schmidt	1100	2.00
Marie Marlin	1150	2.00
Adolph T. Kuhn	1188	2.08
Cody F. Bohleber	1000 plus	1.78
T. Dockery	1080	1.96
Russell Schlegel	1100	1.77
Sylvester J. Runau	over 1000	2.30
Edward L. Runau	1175	2.30
John S. Phillips	1005	2.04
Charles E. Morlock	1000 plus	2.33
Irene Cox	800	1.96
Doris R. Ungetheim	840	1.78
Edwin Cianor	1100	1.77
William Dirhlmann	over 1000	1.99
William James Heyna	under 1000 (over half pay period)	1.98
Roy McCrarey	over 1000	1.79
Alvin Opperman	1100 plus	1.97
Willie H. Schneider	over 1000	1.64

Name of Employee	Number of Hours Worked From Jan. 1 to June 1, 1957	Average Rate of Pay
Maurice E. Williams	1200	$2.12
Frederick E. Barton	1184	1.78
Elmer H. Mann	1100 plus	1.97
George Russell	1160 plus overtime	2.07
E. W. Tenbarge	1000	1.96
Thomas W. Barnard	1150	2.24
Charles E. Bolton	1100 plus	2.07
Walter T. Schneider	1050	1.88
Charles Cutteridge	1200	1.86
Vestus Mayse	over 1000	1.86
Louis R. Stuom	1200	1.86
Jesse L. Shuck	over 1000	1.64
Clarence Roy LaMar	1200	2.19
Fannie L. Webster	1140	1.96
Wilbur Howery	over 1000	1.96
Gene Burdge	1250	2.50
Howard F. Moffett	1211	1.99
Rupert H. Riley	1253	2.16
Robert Harden	1200	1.16
Clyde W. Grove	1157	2.14
Avis L. Bolton	1184	2.06
Ruth P. Randolph	600	1.96
Malcolm Ernest Summers	1100 plus	2.27
Dalton M. Shaw	over 1000	1.97
Anna R. Grimm	620	1.96
Reginal Butze	1010	2.08
Warren Reynolds	over 1200	1.76
Margaret Golden Cavett	1200	2.15
Valada Gibson	1200	2.15
Minnie B. Madden	700	1.78
William S. Winterath	1100	2.00
Willis Brack	over 1150	1.76
Elizabeth Sauer	More than 50% Terminated Apr. 18, 1957	1.66
Norman J. Hove	over 1000	2.56
M. Cecilia Kanges	over 50% (Pay period)	1.96
Charles Dickens	1040	1.86
Louise Tomlinson	950	1.96
Hazel L. Ritter	1120	1.76
Ethel M. Hudson	approx. 938	1.76
Welby W. Cobb	over 1000	2.71
Anna P. Stewart	600	1.66
Mary K. Koch	600	1.66
Ruby Pifer	about 1350	1.96
Wilhelmina Batteiger	1120	
Louise Steishauser		1.76
Ida J. Kuntz	1225	1.76
Irma S. Koelling		1.96
Francis Grant	1200	1.77
Jennie Altkisson	appx. 800	1.96
J. Ash K. Aight	1000 plus	2.30
Mildred Crane	about 700	1.96
Fred M. Hoffmann	over 1000	2.04
Jack Threale	1100	2.00
Philip E. Zerkelbach	1160	1.97
Clarence E. Rieber	appx. 1300	2.37
Harold W. Dawson	1150	
Elgon Turner	640	2.07

Name of Employee	Number of Hours Worked From Jan. 1 to June 1, 1957	Average Rate of Pay
Clarence A. Moll	1120	$2.04
Sturgis Collins	1179	1.31
Elnara L. Moll	1000	1.96 then 1.76
Glenn		2.08
Frances Schneider	1300	1.97
Beulah A. Brink	over 1000	1.97
Irma Whitledge	about 700	1.96

GIBSON CIRCUIT COURT

A. Dale Eby, Judge
Princeton, Indiana

January 20, 1959

Mr. Sydney L. Berger
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Evansville, Indiana

Attention: Willard Shrode

Re: No. C-7824, Vanderburgh Superior Court. Johnson, et al v. Hoosier Cardinal

Gentlemen:

I have been spending quite a bit of time on questions involved in this case—more time than I should, taking into consideration the other business which I have in this court. However, there is an interesting question involved and one affecting the rights of many persons. Therefore, I feel that the time I have spent in this matter is fully justified. Especially is this true since I ruled on this matter at the trial and perhaps on the motion to strike out when first presented without going into the matter as thoroughly as I should have.

The main question in this case before me now, as I see it, is Specification 2 in the motion of the defendant to strike out parts of plaintiff's complaint, which is rhetorical

paragraph 6 of the complaint. This paragraph alleges in substance that the plaintiff and each member of the class which the plaintiff represents has earned wages as set forth in Exhibit 2. In other words, it is a motion to strike from the complaint that part which alleges that it is a class action.

In going into the law on this question, it seems to me to be universally agreed that a party who sues in a representative capacity must have an interest in the controversy common with those for whom he sues and there must be that unity of interest between him and all the other parties that would entitle them to maintain an action if the suit was brought by them jointly. The action is in effect brought by all the parties, and the party named as plaintiff stands simply as a representative for himself and all others. If the interest is separate, the action must be brought separately by each person interested, for those having a separate interest cannot join in this action (See Certia vs. University of Norte Dame, 82 App. 542, pages 544 and 545).

As stated in Grover vs. Marott, 192 Ind. 552, page 558, it says: "The rule of the joinder of plaintiffs in this jurisdiction, briefly stated, requires that all who unite as plaintiffs must have a common interest in the subject matter of the action *and each must be interested in the relief of the other* but the equality of the interest or that such interest may be legally several is not essential". This case is cited with approval in Kimes v. City of Gary, 224 Ind. 300.

Furthermore, it has been held that in order to prosecute a class action, there must be a joint cause of action in all the members of the class.

Certainly in the case before us, the right of the plaintiffs is not joint but several. Each plaintiff seeks to recover a certain amount of money to be determined, but no one can say that each plaintiff is interested in the relief of any other plaintiff. Each seeks to recover for himself or herself and it cannot make any difference to him or her what some other plaintiff recovers.

This court has read and given a great deal of time and thought to all the cases cited in the briefs, especially the case of *McKenna* vs. *Standard Oil Company*, 140 NE (2) 512 (236 Ind. 370), which cites with approval the case of *Mosetta* vs. *National Bronze and Aluminum Foundry Company*, 112

NE (2) 15, an Ohio case, and I am unable to see how this court can get around the reasoning held in that case. I believe that it states the law in Indiana, that this is a several action and not a joint action, and that each of the plaintiffs must maintain his action in his own name.

I can readily see where a representative suit could be brought where all the plaintiffs seek to recover rights under a contract or enjoin something which is common to all, etc., but here each plaintiff, as I said before, seeks to recover a sum of money for himself or herself individually and the relief could not be common to all.

Therefore, I am making the following ruling in this case:

"Come again the parties hereto by counsel, and the Court having had under consideration the defendant's motion to strike out parts of plaintiff's complaint and now being sufficiently advised in the premises, sustains said motion as to Specification 2, which is rhetorical paragraph 6 of the complaint, and overrules said motion as to Specifications 1, 3 and 4.

And the Court having had under consideration the motion of the defendant to require the plaintiffs to make the complaint more specific, definite and certain and now being sufficiently advised in the premises, overrules said motion as to Specifications 1 and 2 and sustains said motion as to Specification 3, with exception to the parties".

I believe that the amendment was made as to vacation pay instead of wages and, if not, it should be done, although wages would include vacation pay.

It may appear to be a hardship that all employees have to file separate actions, but I believe this is a matter for the Legislature to determine and not one to be determined by the courts under our present statutes as I interpret them.

If the weather permits, I will be in Superior Court in Evansville on Wednesday, January 21, 1959 (which is the day you will receive this letter), at 11:30 A. M. to make this ruling.

Sincerely yours,

/s/ A. Dale Eby,
A. Dale Eby,
Special Judge.

ADE:lhf

BE IT REMEMBERED that on the 21st of January, 1959, the same being the 36th Judicial Day of the December Term, 1958, of the Superior Court of Vanderburgh County, an entry was made in the order book of said court, which entry is in words and figures as follows, to-wit:

C-7824

KENNETH H. JOHNSON, ET AL,

vs.

HOOSIER CARDINAL CORPORATION

Comes again the parties hereto by counsel, and the Court having had under consideration the defendant's motion to strike out parts of plaintiffs' complaint and now being sufficiently advised in the premises, sustains said motion as to Specification 2, which is rhetorical paragraph 6 of the complaint, and overrules said motion as to Specifications 1, 3 and 4. And the court having had under consideration the motion of the defendant to require the plaintiffs to make the complaint more specific, definite and certain and now being sufficiently advised in the premises, overrules said motion as to Specifications 1 and 2 and sustains said motion as to Specification 3, with exception to the parties.

s/ A. DALE EBY,
Hon. A. DALE EBY,
Special Judge.

Vanderburgh Superior Court Filed Aug. 7, 1959
s/ Bert Reed, Clerk

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY

Cause No. C-7824

STATE OF INDIANA,
County of Vanderburgh, ss:

FRANK KAVANAUGH, *Plaintiff*,

vs.

HOOSIER CARDINAL CORPORATION, *a Corporation Defendant*

AMENDED COMPLAINT

Comes now Frank Kavanaugh, plaintiff herein, and alleges:

1. That on or about the 1st day of February, 1958, the plaintiff herein received certain wage claims by written, endorsed assignment from numerous endorsers and assignees; that a copy of said assignment is filed herewith, made a part of this complaint and marked Plaintiff's Exhibit "A".

2. That each of the endorsers-assignors appearing in the aforementioned Exhibit "A" prior to the aforesaid assignment was an employee of the defendant, Hoosier Cardinal Corporation.

3. That on or about the 1st day of September, 1955, the assignors by their collective bargaining representative, United Automobile, Aircraft & Agricultural Implement Workers of America and Local 145 thereof and the defendant corporation by its officers, entered into an agreement, a copy of which is filed herewith and made a part of this complaint, and marked Plaintiff's Exhibit "B".

4. That as part of the compensation of said employees referred to in Article VIII of said agreement, vacation

wages were guaranteed to all employees who have either worked at least One Thousand (1000) hours during the preceding Twelve (12) months or who have certain seniority rights as described in Article VIII; that said vacation pay is to be based on the average wages of each employee during the preceeding Twelve (12) Months.

5. That prior to the 1st of June, 1957, and since the 1st of January, 1957, the assignors herein have earned wages according to said Article VIII in varying amounts all as shown in Plaintiff's Exhibit "C" which is now filed and made a part of this complaint.

6. That on or about the 1st day of June, 1957, defendant discontinued the employment of these assignors but defendant has consistently refused to pay over to said assignors any of the accumulated and accrued wages which are now due and owing.

7. That the pay records of these assignors are in the possession and control of the defendant; neither plaintiff nor his assignors have access to said records.

8. That neither this plaintiff nor his assignors have accurate records to determine the exact amount or amounts of wages which said assignors have earned from said defendant; that according to the knowledge and belief of plaintiff and his assignors, said wages now owing are in the amount of Forty Thousand Dollars ($40,000.00), all as shown by Plaintiff's Exhibit "C".

9. That pursuant to the Acts of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof, in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due the plaintiff and his assignors as liquidated damages an amount equal to double the unpaid wages, which amount is Eighty Thousand Dollars ($80,000.00).

WHEREFORE, plaintiff prays judgment against the defendant corporation in the amount of Forty Thousand Dollars ($40,000.00) with liquidated damages in the amount of

Eighty Thousand Dollars ($80,000.00) together with a reasonable fee for plaintiff's attorney, costs of this action and all other relief right and proper in the premises.

Respectfully submitted,

s/ LYNNVILLE G. MILES,
LYNNVILLE G. MILES.

s/ DANIEL F. CUMMINGS,
DANIEL F. CUMMINGS,
Attorneys for Plaintiff.

Vanderburgh Superior Court, Filed Aug. 26, 1959, Bert Reed, Clerk

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY, VANDERBURGH COUNTY, INDIANA, JUNE TERM, 1959

Cause No. C-7824

STATE OF INDIANA,
County Of Vanderburgh, ss:

FRANK KAVANAUGH, *Plaintiff*,

vs.

HOOSIER CARDINAL CORPORATION, A CORPORATION, *Defendant.*

DEFENDANT'S DEMURRER TO PLAINTIFF'S AMENDED COMPLAINT

The defendant, Hoosier Cardinal Corporation, demurs to the amended complaint of the plaintiff, Frank Kavanaugh, on the following grounds:

1. That the amendment complaint does not state facts sufficient to constitute a cause of action.
2. That the plaintiff has no legal capacity to sue.
3. There is a defect of parties plaintiff in this: That some one of the persons referred to in plaintiff's amended complaint as assignors, and who are named in Exhibit "A" attached to and made a part of plaintiff's amended complaint, is the necessary plaintiff and is not joined as such.
4. That several causes of action are improperly joined as follows: The amended complaint shows on its face that the alleged wage claims which were assigned to the plaintiff herein, if valid, would constitute separate independent causes of action of each assignor against the defendant herein, and said several causes of action cannot be joined in one cause of action.

KAHN, DEES, DONOVAN, KAHN & SHRODE,

By ————

Attorneys for Defendant.

MEMORANDUM

1. The amended complaint shows on its face that the alleged claims of certain of the individual employees of the defendant were assigned to the plaintiff herein without consideration and purely for the purpose of permitting him to bring an action thereon, and if successful, to distribute to each of the assignors the sum collected, less the expenses of collection. This shows that the plaintiff herein is not the real party in interest and, therefore, cannot maintain this action on any of the alleged claims of said employees.

2. The amended complaint shows on its face that the only persons entitled to the true fruits of the action and, hence, the real parties in interest, are the assignors of the alleged claims sought to be recovered by the plaintiff herein, and that the plaintiff herein simply has the bare legal title to such claims which is insufficient to constitute him a real party in interest and, therefore, he has no capacity to sue on said alleged claims.

KAHN, DEES, DONOVAN, KAHN & SHRODE,

By _____

Attorneys for Defendant.

An oral argument is respectfully requested.

KAHN, DEES, DONOVAN, KAHN & SHRODE,

By _____

Attorneys for Defendant.

Two copies of the above and foregoing Defendant's Demurrer to Plaintiff's Amended Complaint were handed to Sydney Berger, 7 Koenig Building, 114 N. W. Fourth Street, Evansville, Indiana, this 26th day of August, 1959.

KAHN, DEES, DONOVAN, KAHN & SHRODE,

By _____

Attorneys for Defendant.

BE IT REMEMBERED that on the 23rd day of September, 1959, the same being the 12th Judicial Day of the September Term, 1959, of the Superior Court of Vanderburgh County, an entry was made in the order book of said court, which entry is in words and figures as follow, to-wit:

C7824

KENNETH H. JOHNSON, ET AL,

vs.

HOOSIER CARDINAL CORPORATION

Comes the parties hereto by counsel and the court having had under consideration the defendant's Demurrer to plaintiff's Amended complaint and now being sufficiently advised in the premises, sustains said demurrer, to which ruling and action of the court the plaintiff at the time excepts. Plaintiff given till November 18, at 2 P.M. to plead over or judgment will be rendered.

s/ A. DALE EBY,
Hon. A. DALE EBY,
Special Judge.

Vanderburgh Superior Court, Filed December 9, 1959
s/ Bert Reed, Clerk

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY

Cause No. C-7824

STATE OF INDIANA,
County of Vanderburgh, ss:

KENNETH H. JOHNSON, RAYMOND F. FALLEN, JUANITA M. MILLER, DELORES ESTHER SCHMIDT, BERTHA COLBERN, NORMAN HOOE, WALTER DUNN, WILLIE E. SCHNEIDER, AS INDIVIDUALS AND AS REPRESENTATIVES OF A CLASS, *Plaintiffs*,

vs.

HOOSIER CARDINAL CORPORATION, *Defendant*

AMENDED COMPLAINT

Come now the plaintiffs, for themselves and others similarly situated, the members of a class who are very numerous, being more than one hundred in number, and for cause of action state:

1. That the defendant is a corporation incorporated under the laws of the State of Indiana;

2. That each and all the named plaintiffs and each and all the members of the class which these named plaintiffs represent have been employees of the defendant corporation prior to the commencement of this action; that the question presented in this complaint is of common interest to all members of the aforesaid class; that the members of said class are numerous, being more than one hundred in number and it is impracticable to bring them all before the Court; that the named plaintiffs fairly represent the interests and rights of this class and this Court, can ajudicate the rights of all the members of this class fairly and justly in this action and through these representatives;

3. That on or about the 1st day of September, 1955, the plaintiffs by their collective bargaining representative,

United Automobile, Aircraft and Agricultural Implement Workers and Local 135 thereof and the defendant corporation by its officers, entered into an agreement, a copy of which is filed herewith and made a part of this complaint and is marked "Plaintiffs' Exhibit 1;"

4. That the claim of each of the plaintiffs and of each member of the plaintiffs' class arises from and out of the branch of the collective bargaining contract described as "Plaintiffs' Exhibit 1;"

5. That as part of the compensation of said employees, Article VIII of said agreement guarantees vacation wages to all employees who have either worked at least 1000 hours during the preceeding twelve months or who have certain seniority rights as described in Article VIII; that said vacation pay is to be based on the average wages of each employee during the preceeding twelve months;

6. That prior to the 1st of June, 1957, and since the 1st of January, 1957, the named plaintiffs and each member of the class of said former employees which said plaintiffs represent have earned wages according to said Article VIII in varying amounts all as shown in Plaintiffs' Exhibit 2, which is now filed and made a part of this complaint;

7. That on or about the 1st day of June, 1957, defendent discontinued the employment of the named plaintiffs and the employment of all the members of the class which said employees represented, but defendant has consistently refused to pay over to said plaintiffs or to any members of the class represented herein any of the accumulated and accrued wages which are now due and owing;

8. That the pay records of plaintiffs and each member of the class represented herein are in the possession and control of the defendant; that plaintiffs have no access to said records;

9. That plaintiffs and the members of the class herein are without accurate records to decertain the exact amount or amounts of wages which they have earned from said defendant; that according to their knowledge and belief, said wages now owing to all the plaintiffs and the members of the class are in the amount of Forty Thousand Dollars, ($40,000.00), all as shown by Plaintiffs' Exhibit 2;

10. That pursuant to the Acts of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof, in accordance with the Acts of the General Assembly for the 1933, Chapter 47, Section 2, there is due the plaintiffs and the members of the class they represent an amount equal to double the unpaid wages, which amount is Eighty Thousand Dollars, ($80,000.00);

11. That defendant corporation is in iminent danger of insolvency and has in fact discontinued many of its operations in this State; and that defendant has transferred many of its assets to the Mimosa Corporation in South Carolina and beyond the jurisdiction of the Indiana Courts; that defendant's assets remaining in the jurisdiction of the Indiana Courts are now advertised for sale; that all security for the protection of these plaintiffs' liens for wages is in danger of dissipation and distribution; that unless said remaining assets are impounded or otherwise protected from dissipation and distribution, the plaintiffs herein and all the members of the class represented by them will be prevented from achieving any practical satisfaction of their claims;

12. That it will be to the best interests of plaintiffs and the members of the class which they represent and all creditors of the defendant corporation to have a receiver appointed for said defendant corporation to conduct and carry on the business of said defendant corporation and to preserve and distribute the assets thereof;

13. That the defendant corporation is now threatened with a multiplicity of law suits and plaintiffs and the members of the class which they represent have no adequate remedy at law.

WHEREFORE, the plaintiffs ask for judgment against the defendant corporation in the amount of Forty Thousand Dollars, ($40,000.00), with liquidated damages in the amount of Eighty Thousand Dollars, ($80,000.00), together with a reasonable fee for plaintiffs' attorney, that the plaintiff recover costs of the defendant, and further asks that this Court appoint a receiver for the property and assets of the said defendant corporation with the usual powers and authority conferred upon a receiver in such cases and that

this Court order that this matter be set down for hearing for the appointment of a receiver and for all other relief right and proper.

S/Lynnville G. Miles and Daniel F. Cummings,
Attorneys for Plaintiffs.

Vanderburgh Superior Court, Filed Mar. 18, 1960,
s/ Bert Reed, Clerk.

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY

Cause No. C-7824

STATE OF INDIANA,
County of Vanderburgh, ss:

KENNETH H. JOHNSON, RAYMOND F. FALLEN, JUANITA M. MILLER, DELORES ESTHER SCHMIDT, BERTHA COLBERN, NORMAN HOOE, WALTER DUNN, WILLIE H. SCHNEIDER, AS INDIVIDUALS AND AS REPRESENTATIVES OF A CLASS, *Plaintiffs*,

vs.

HOOSIER CARDINAL CORPORATION, *Defendant*

THIRD AMENDED COMPLAINT

Come now the plaintiffs, for themselves and others similarly situated, the members of a class who are very numerous, being more than One Hundred in number, and for cause of action state:

1. That the defendant is a corporation incorporated under the laws of the State of Indiana;

2. That each and all the named plaintiffs and each and all the members of the class which these named plaintiffs represent have been employees of the defendant corporation prior to the commencement of this action; that the question presented in this complaint is of common interest to all members of the aforesaid class; that the members of said class are numerous, being more than One Hundred in number and it is impracticable to bring them all before the Court; that the named plaintiffs fairly represent the interests and rights of this class and this Court can adjudicate the rights of all the members of this class fairly and justly in this action and through these representatives;

3. That on or about the 1st day of September, 1955 the plaintiffs by their collective bargaining representative,

United Automobile, Aircraft and Agricultural Implement Workers and Local 135 thereof and the defendant corporation by its officers, entered into an agreement, a copy of which is filed herewith and made a part of this complaint and is marked "Plaintiffs' Exhibit 1";

4. That the claim of each of the plaintiffs and of each member of the plaintiffs' class arises from and out of the breach of the collective bargaining contract described as "Plantiffs' Exhibit 1";

5. That as part of the compensation of said employees, Article VIII of said agreement provides: "Vacation pay shall be granted on the following basis:

a. Each hourly rated employee—shall be entitled to Forty (40) hours vacation with pay;
c. Each hourly rated employee (with 3-10 years service) shall be entitled to Eighty (80) hours vacation with pay.
d. Each hourly rated employee (who has more than Ten years service) shall be entitled to One Hundred Twenty (120) hours vacation with pay."

The aforesaid article further provides that all employees who have either worked at least 1000 hours during the preceeding twelve months or who have certain seniority rights as described in Article VIII shall be guaranteed vacation pay; that said vacation pay is to be based on the average wages of each employee during the preceeding twelve months;

6. That prior to the 1st of June, 1957, and since the 1st of January, 1957, the named plaintiffs and each member of the class of said former employees which said plaintiffs represent have earned vacation pay according to said Article VIII in varying amounts all as shown in Plaintiff's Exhibit 2, which is now filed and made a part of this complaint;

7. That on or about the 1st day of June, 1957, defendant discontinued the employment of the named plaintiffs and the employment of all the members of the class which said employees represented, but defendant has

consistently refused to pay over to said plaintiffs or to any members of the class represented herein any of the accumulated and accrued vacation pay which is now due and owing;

8. That the pay records of plaintiffs and each member of the class represented herein are in the possession and control of the defendant; that plaintiffs have no access to said records;

9. That plaintiffs and the members of the class herein are without accurate records to determine the exact amount or amounts of vacation pay which they have earned from said defendant; that according to their knowledge and belief, said vacation pay now owing to all the plaintiffs and the members of the class is in the amount of Forty Thousand Dollars ($40,000.00), all as shown by Plaintiffs' Exhibit 2;

10. That pursuant to the Acts of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof, in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due the plaintiffs and the members of the class they represent an amount equal to double the unpaid vacation pay, which amount is Eighty Thousand Dollars ($80,000.00);

11. That defendant corporation is in imminent danger of insolvency and has in fact discontinued many of its operations in this State; and that defendant has transferred many of its assets to the Mimosa Corporation in South Carolina and beyond the jurisdiction of the Indiana Courts; that defendant's assets remaining in the jurisdiction of the Indiana Courts are now advertised for sale; that all security for the protection of these plaintiffs' liens for wages is in danger of dissipation and distribution; that unless said remaining assets are impounded or otherwise protected from dissipation and distribution, the plaintiffs herein and all the members of the class represented by them will be prevented from achieving any practical satisfaction of their claims;

12. That it will be to the best interests of plaintiffs and the members of the class which they represent and all creditors of the defendant corporation to have a receiver

appointed for said defendant corporation to conduct and carry on the business of said defendant corporation and to preserve and distribute the assets thereof;

13. That the defendant corporation is now threatened with a multiplicity of law suits and plaintiffs and the members of the class which they represent have no adequate remedy at law.

WHEREFORE, the plaintiffs ask for judgment against the defendant corporation in the amount of Forty Thousand Dollars ($40,000.00) with liquidated damages in the amount of Eighty Thousand Dollars ($80,000.00) together with a reasonable fee for plaintiffs' attorney, that the plaintiff recover costs of the defendant, and further asks that this Court appoint a receiver for the property and assets of the said defendant corporation with the usual powers and authority conferred upon a receiver in such cases and that this Court order that this matter be set down for hearing for the appointment of a receiver and for all other relief right and proper.

S/ LYNNVILLE G. MILES,
LYNNVILLE G. MILES.

S/ DANIEL F. CUMMINGS,
DANIEL F. CUMMINGS,
Attorneys for Plaintiffs.

Vanderburgh Superior Court, Filed Apr. 20, 1960,
Bert Reed, Clerk.

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY

Cause No. C-7824

STATE OF INDIANA,
County of Vanderburgh, ss:

KENNETH H. JOHNSON, RAYMOND F. FALLEN, JUANITA M. MILLER, DELORES ESTHER SCHMIDT, BERTHA COLBERN, NORMAN HOOE, WALTER DUNN, WILLIE H. SCHNEIDER, AS INDIVIDUALS AND AS REPRESENTATIVES OF A CLASS, *Plaintiffs*,

vs.

HOOSIER CARDINAL CORPORATION, *Defendant*

DEMURRER TO PLAINTIFFS' THIRD AMENDED COMPLAINT

The defendant, Hoosier Cardinal Corporation, for its demurrer to plaintiffs' third amended complaint herein, demurs to said third amended complaint and for ground of demurrer says:

1. That plaintiffs' third amended complaint herein does not state facts sufficient to constitute a cause of action against the defendant, Hoosier Cardinal Corporation.

KAHN, DEES, DONOVAN, KAHN & SHRODE

By————

MEMORANDUM

1. The third amended complaint shows on its face that it is brought by eight (8) named individuals joining together as plaintiffs and seeking as (a) individuals, and (b) representatives, of a class composed of former employees of the defendant numbering more than one hundred.

2. In order to withstand a challenge by demurrer on the ground that the complaint does not state facts sufficient to constitute a cause of action, the third amended complaint must allege a cause of action either in (a) the eight named individual plaintiffs as having a united or general interest among them which could be established by the same evidence, or (b) the eight named plaintiffs as representatives of the class and having a united, common or general interest with the unnamed members of the class which could be established by the same evidence.

3. The third amended complaint shows on its face that it does not state a cause of action against the defendant in favor of the named plaintiffs individually or as representatives of the unnamed members of the class because there is no showing of a united interest either among the named eight plaintiffs or among the named eight plaintiffs and the unnamed members of the class. The detailed reasons follow.

4. The only remedy now sought in this action is money damages. The demand that a Receiver be appointed herein was tried by this Honorable Court and resulted in a finding and judgment in favor of the defendant.

5. It appears from the third amended complaint that a collective bargaining agreement was executed between the defendant and a labor union which represented its employees for collective bargaining purposes and that a copy of said agreement, marked "Plaintiffs' Exhibit 1", is attached to and made a part of said complaint. It further appears that Forty Thousand Dollars ($40,000.00) of the money damages demanded by the third amended complaint is alleged to be for unpaid vacation pay. It also appears on the face of said third amended complaint that the balance of the money damages demanded are for liquidated damages for failure to pay said vacation pay. The third amended com-

plaint does not allege the amount of vacation pay and damages which each named plaintiff and each member of the class are seeking to recover.

6. It appears from said third amended complaint that the amount of money to which each member of the class and each individual plaintiff is entitled to depends upon his seniority (length of service with the defendant), his rate of pay, the number of hours worked by him during the twelve (12) months preceding the vacation period and the average earnings during the preceding year of each member of the class and of each individual plaintiff.

7. The third amended complaint shows on its face that the named plaintiffs, if they are entitled to vacation pay, may be entitled to recover different amounts. Each of the named plaintiffs would have his individual seniority rights and no two may be the same. Each of the named plaintiffs would have his individual rate of pay and average earnings and no two may be the same. Each named plaintiff would have his individual record on the number of hours worked during the twelve (12) months preceding the vacation period and no two may be the same. There is no question common to them and no issue which affects all of the named plaintiffs alike. None of the named plaintiffs are united in interest with any of the other named plaintiffs and there is no question of common or general interest among them which could be established by the same evidence. Joint trial of their several causes of action would not be possible because each named plaintiff has his own different individual cause of action. Each named plaintiff seeks to recover for himself or herself and it cannot make any difference to him or her what any other named plaintiff recovers.

8. The third amended complaint shows on its face that the unnamed members of the class, if they are entitled to vacation pay, may be entitled to recover different amounts. Each of the unnamed members of the class would have his individual seniority rights and no two may be the same. Each of the unnamed members of the class would have his individual rate of pay and average earnings and no two may be the same. Each of the unnamed members of the

class would have his individual record on the number of hours worked during the twelve (12) months preceding the vacation period and no two may be the same. There is no question common to them and no issue which affects any of the unnamed members of the class and any of the named plaintiffs alike. None of the unnamed members of the class or named plaintiffs are united in interest with any of the other unnamed members of the class or the named plaintiffs and there is no question of common or general interest among them which could be established by the same evidence. Joint trial of their several causes of action would not be possible because each unnamed member of the class and each named plaintiff has his own different individual cause of action. Each unnamed member of the class and each named plaintiff seeks to recover for himself or herself and it cannot make any difference to him or her what any other unnamed member of the class or named plaintiff recovers.

An oral argument is respectfully requested.

KAHN, DEES, DONOVAN, KAHN & SHRODE,

By _____

Attorneys for Defendant.

The undersigned certifies that he delivered copies of the above and foregoing demurrer and memorandum to Sydney L. Berger, one of the attorneys for the plaintiffs, this 20th day of April, 1960.

_____

ENTRY for May 4, 1960

C-7824

IN RE: JOHNSON, ET AL,

v.

HOOSIER CARDINAL CORPORATION

And the plaintiffs, failing and refusing to amend their complaint or plead further, abide said ruling, and the Court renders judgment on the demurrer to the third amended complaint.

IT IS, THEREFORE, CONSIDERED AND ADJUDGED by the Court that the plaintiffs take nothing by this action and that the defendant recover of the plaintiffs, its costs and charges in this cause paid, laid out and expended.

/s/ A. DALE EBY,
Special Judge,
Superior Court of Vanderburgh County.

Vanderburgh Superior Court, Filed Jun 3, 1960, s/ Bert Reed, Clerk

IN THE SUPERIOR COURT OF VANDERBURGH COUNTY

Cause No. C-7824

STATE OF INDIANA,
County of Vanderburgh, ss:

KENNETH H. JOHNSON, RAYMOND F. FALLEN, JUANITA M. MILLER, DELORES ESTHER SCHMIDT, BERTHA COLBERN, NORMAN HOOE, WALTER DUNN, WILLIE H. SCHNEIDER, AS INDIVIDUALS AND AS REPRESENTATIVES OF A CLASS, *Plaintiffs*,

vs.

HOOSIER CARDINAL CORPORATION, *Defendant*

ENTRY AND DECREE

And the plaintiffs, failing and refusing to amend their complaint or plead further, abide said ruling, and the Court renders judgment on the demurrer to the third amended complaint.

IT IS, THEREFORE, CONSIDERED AND ADJUDGED by the Court that the plaintiffs take nothing by this action and that the defendant recover of the plaintiffs, its costs and charges in this cause paid, laid out and expended.

s/ A. DALE EBY,
Special Judge,
Superior Court of Vanderburgh County.

Dated this *3rd* day of *June*, 1960.

FILE COPY

FILED
JAN 13 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,
Petitioner,

vs.

HOOSIER CARDINAL CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

HARRY P. DEES,
905 Southern Securities Building,
Evansville, Indiana 47708,
Attorney for Respondent.

ARTHUR R. DONOVAN,
JOSEPH A. YOCUM,
KAHN, DEES, DONOVAN & KAHN,
905 Southern Securities Building,
Evansville, Indiana 47708,
Of Counsel.

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	3
Summary of Argument	4
Argument	11
I. The Court Below Did Not Have Jurisdiction	11
II. In This Case the Lower Courts Correctly Followed the State Statute of Limitations Since No Federal Limitation Was Provided by Congress	15
III. If a National Formulation Under Section 301 of the Labor Management Relations Act Is Necessary, the Six Months Period Provided in Section 10(b) of Said Act Should Be Applied	20
IV. There Is Neither a Need, Nor Do the Facts Support the Application of a Tolling Rule In This Case	24
V. A Statute of Limitations Governing Written Contracts Does Not Apply In This Case	28
Conclusion	33
Appendix	35

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	3
Summary of Argument	4
Argument	11
I. The Court Below Did Not Have Jurisdiction	11
II. In This Case the Lower Courts Correctly Followed the State Statute of Limitations Since No Federal Limitation Was Provided by Congress	15
III. If a National Formulation Under Section 301 of the Labor Management Relations Act Is Necessary, the Six Months Period Provided in Section 10(b) of Said Act Should Be Applied	20
IV. There Is Neither a Need, Nor Do the Facts Support the Application of a Tolling Rule In This Case	24
V. A Statute of Limitations Governing Written Contracts Does Not Apply In This Case	28
Conclusion	33
Appendix	35

CITATIONS.

Table of Cases.

Albrecht v. Indiana Harbor Belt R. Co., 178 F. 2d 577 (CCA-7 1949) 30

Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U. S. 437 ..... 13, 31

Burnett v. New York Central R. R., 380 U. S. 424 ..... 4, 7, 8, 25, 26

Board of Commissioners of Marion County v. Shipley, 77 Ind. 553 (1887) 30

Campbell v. Haverhill, 155 U. S. 610 16

Carskaddon v. City of South Bend, 141 Ind. 596, 39 N. E. 667 (1895) 30

City of Hobart v. Baum, 237 Ind. 316, 145 N. E. 2d 573 (1957) 25

Cope v. Anderson, 331 U. S. 461 16

Hackleman v. Board of Commissioners of Henry County, 94 Ind. 36 (1889) 30

Hanna v. Plumer, 380 U. S. 460 15

Hawthorn et al. v. The State, ex rel. Harper, 57 Ind. 286 (1877) 25

Helvering v. Wood, 309 U. S. 344, ... 24

Herb v. Pitcairn, 325 U. S. 77 25

Higham v. Harris, 108 Ind. 246, 8 N. E. 255 (1886) 30

International U. of Op. Eng. v. Fischbach and Moore, Inc., 350 F. 2d 936 (CCA-9 1965) 7, 16, 21

J. I. Case Co. v. NLRB, 321 U. S. 332 ..... 10, 32

Johnson v. Hoosier Cardinal Corporation, 134 Ind. App. 477, 189 N. E. 2d 592 (1963) 4

Kosley v. Goldblatt Bros. Inc., 251 F. 2d 558 (CCA-7 1958) cert. den. 357 U. S. 904 32

Kordewick v. Indiana Harbor Belt R. Co., 157 F. 2d 753 (CCA-7 1946) cert. den. 329 U. S. 806 30

Local No. 1424, Internat. Machinists v. NLRB, 362 U. S. 411 .....7, 20

MacKay v. Loew's, Inc., 182 F. 2d 170 (1950), cert. den. 340 U. S. 828, reh. den. 340 U. S. 885 32

McClaine v. Rankin, 197 U. S. 154 16

McKenna v. Standard Oil Company, 236 Ind. 370, 140 N. E. 2d 512 (1957) 12, 19

Michael v. Rainer, ... Ind. ..... 205 N. E. 2d 543 (1965) 30

McCluny v. Silliman, 3 Pet. 270, 28 U. S. 415 16

Moore v. Illinois Central Railroad Co., 312 U. S. 630 .. 15

Moore v. Ohl, 65 Ind. App. 691, 116 N. E. 9 (1917) 30

O'Sullivan v. Felix, 233 U. S. 318 16

Reliford v. Eastern Coal Corp., 260 F. 2d 447, 455 (CCA-6 1958), cert. den. 359 U. S. 958 16

Republic Pictures Corp. v. Kappler, 151 F. 2d 543 (CCA-8 1945), aff'd per curiam 327 U. S. 757 16

Republic Steel Corp. v. Maddox, 379 U. S. 650 .....5, 14

Safeway Stores, Inc. v. Oklahoma Retail Grocers Association, Inc., 360 U. S. 334 .....8, 24

Smith v. Evening News Association, 371 U. S. 195 ....4, 6, 9, 13, 17, 20, 22, 26, 27, 31

Swick v. Glenn L. Martin Co., 68 F. Supp. 863 (D. C. Md. 1946), affirmed 160 F. 2d 483 (CCA-4 1947), cert. den. 232 U. S. 772 16

Textile Workers Union v. Lincoln Mills of Ala., 353 U. S. 448 .....12, 14

Tomilson v. Briles, 101 Ind. 538, 1 N. E. 63 (1885).... 30

Tully v. Fred Olson Motor Serv. Co., 134 N. W. 2d 393, ... Wis. ..... (1965) (Cir. Ct.), 50 L. C. P. 19, 198 (1965) 7, 16, 21

United Mine Workers v. Meadowcreek Coal Corp., 263 F. 2d 53 (CCA-6 1958), cert. den. 359 U. S. 1013.... 16

United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U. S. 574..... 14

Van Huffel v. Harkelrode, 284 U. S. 225..... 24

Virginia Ry. Co. v. Mullens, 271 U. S. 220.....8, 24

MISCELLANEOUS.

United States Statutes.

Section 301 of the Labor Management Relations Act, 1947, as amended, Title 29 U. S. C., Section 185, 61 Stat. 156 .....11, 13, 15, 16, 18

Rules of Decision Act, 28 U. S. C. Sec. 1652, 62 Stat. 944 15

29 U. S. C. 160(b).....20, 21, 23

29 U. S. C. 152, 157..... 10

29 U. S. C. 159, 49 Stat. 453, 61 Stat. 143, 65 Stat. 601, 73 Stat. 525, 542..... 10

35 U. S. C. 286; 66 Stat. 813..... 19

15 U. S. C. 15(b) 69 Stat. 283..... 19

Legislative History.

Senate Report 105 on S. 1126..... 22

2 Legislative History of the Labor-Management Relations Act 1073 (1950)..... 22

Indiana Statutes.

Burns' Indiana Statutes Annotated:
Sec. 2-602 ..... 3, 18
Sec. 2-601 3
Sec. 2-608 25
Sec. 40-102 3
Sec. 40-104 3
Sec. 40-105 3
Acts of the General Assembly of the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 .. 3
Acts of the General Assembly for the year 1933, Chapter 47, Section 2 3

Treatises and Law Reviews (Texts).

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Note, "Federal Statutes Without Limitations Provisions," 53 Colum. L. Rev. 68 (1953) 15
Note, 76 Harv. L. Rev. 1306, 1307 (1963) 16
Note, 49 Mich. L. Rev. 937 (1951) 15
Note, 60 Mich. L. Rev. 1164 (1962) 16
Note, 110 U. Pa. L. Rev. 1165 (1962) 16
Note, 64 W. Va. L. Rev. 442 (1962) 16
Blume & George, "Limitations and the Federal Courts", 49 Mich. L. Rev. 937 (1951) 15
Wellington, "Labor and the Federal System" 26 U. Chi. L. Rev. 542 (1959) 17
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54 C. J. S., "Limitation of Actions," S. 289, p. 353; S. 290, p. 354; S. 293, p. 362 28

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 387

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,
Petitioner,

vs.

HOOSIER CARDINAL CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the District Court was filed on May 12, 1964 and appears at R. 12. The opinion of the Court of Appeals for the Seventh Circuit, issued on June 4, 1965, is reported in 346 F. 2d 242, and appears at R. 24.

JURISDICTION.

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit, affirming the District Court's dismissal of Petitioner's suit, were entered on June 4, 1965. The jurisdiction of this Court is invoked

under 28 U. S. C. Sec. 1254 (1). The petition for certiorari was filed on July 22, 1965 and was granted on October 11, 1965. 86 Sup. Ct. 87.

QUESTIONS PRESENTED.

1. Whether or not the court below had jurisdiction under national standards applicable to suits brought under Section 301 of the Labor Management Relations Act.

2. Whether or not the Court in this case should abandon its well established policy, which dictates that state statutes of limitation are to apply in actions brought under federal statutes which do not contain periods of limitation.

3. Whether or not, assuming a need for a national formulation of a limitations period for Section 301 actions, this Court should formulate a limitations standard analogous to the six month period provided in Section 10(b) of the Labor Management Relations Act.

4. Whether or not the Court should, on the facts before it in this case, formulate a national standard of tolling of the applicable limitation periods under Section 301 actions.

5. Whether or not the action involved here is exclusively on a written contract so as to require the application of a twenty year Indiana statute of limitations instead of the Indiana six year statute of limitations applicable to contracts not in writing.

STATUTES INVOLVED.

The Petitioner has correctly set out Section 301 of the Labor Management Relations Act in its Brief. It has, however, omitted certain pertinent and applicable Indiana statutes relied upon by the Petitioner in the District Court, some of which were specifically pleaded and relied upon in Paragraph 10 of the complaint filed in this action and involved the Indiana statutes for penalties, liquidated dam-

ages and attorney fees (R. 5). The Indiana statutes involved herein are as follows: Sections 40-102; 40-104; 40-105 of Burns' Indiana Statutes Annotated, 1933, 1952 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 of said General Assembly for the year 1933, Chapter 47, Section 2); Sections 2-601; 2-602 of Burns' Indiana Statutes, Annotated, 1933, 1965 Pocket Supplement to 1946 Replacement Volume (Act of the General Assembly for the State of Indiana for the year 1881 (Spec. Sess.), Chapter 38, S. 37, p. 240; 1951, Ch. 301, S. 1, p. 999 and Act of said General Assembly for the year 1881 (Spec. Sess.), Chapter 38, S. 38, p. 240; 1951, Ch. 301, S. 2, p. 999); and are set forth in Respondent's Appendix, infra.

STATEMENT.

Petitioner's statement of the case is substantially correct. However, Petitioner has improperly included in its statement of the case the recitation of the attempted class action of *Johnson* v. *Hoosier Cardinal Corporation,* No. C-7824, Superior Court of Vanderburgh County, Indiana (Pet. App. p. 1) in which certain of the employees of the Respondent filed, on behalf of themselves and for other of its employees in the Superior Court of Vanderburgh County, Indiana, a class action seeking to recover vacation pay allegedly due from the Respondent, together with statutory penalties and attorney fees provided under the Indiana wage claim statutes. These are the same claims which the Petitioner is seeking to recover by the complaint filed herein. The state court action and proceedings are not a part of the record in this Court, were not a part of the record in the District Court or the Court of Appeals below, and the arguments which are made in this Court with

reference thereto were not made in the District Court or in the Court of Appeals below.

The state court action was affirmed by the Indiana Appellate Court in *Johnson* v. *Hoosier Cardinal Corporation*, 134 Ind. App. 477, 189 N. E. 2d 592, for the reason that plaintiff's counsel had not properly prepared the brief in order to submit the question of the propriety of the lower court in dismissing plaintiff's action.

SUMMARY OF ARGUMENT.

It is Respondent company's position that the courts below were clearly correct in coming to the conclusion that Petitioner, the Union, could not circumvent the applications of an Indiana statute of limitations of six years concerning contract not in writing by simple expedient of characterizing its suit filed in the District Court as one under Section 301 of the Labor Management Relations Act. Petitioner has raised essentially untenable issues by resorting to two cases decided by this court, *Smith* v. *Evening News Association*, 371 U. S. 195 and *Burnett* v. *New York Central R. R. Co.*, 380 U. S. 424, as authority for a veritable code of substantive law at the heart of which is the assumption that not only no rules now exist concerning the issues raised by the record in this case (contrary to fact), but, in addition, that on the basis of this erroneous premise this court should create national standards concerning period of limitations and principles of tolling applicable to actions brought under Section 301 of the Labor Management Relations Act. This, even though in many analogous situations, under congressional enactments without such periods this Court has declined to make such formulations.

Respondent has met these issues as follows:

1. Point I of Respondent's Brief deals with three issues

questioning the jurisdiction of the federal courts in actions of this type when brought under Section 301. Under its first point, Respondent questions the power of the courts below assuming jurisdiction over a cause of action having its substantive origin under a state wage claim statute when it is the proper interpretation of Article III of the Constitution that federal courts do not have jurisdiction to decide a question involving only state substantive law. The second issue concerns the question of whether or not, under the facts in the record, the Petitioner has any legal standing to bring this action under Section 301 where it is difficult to discern the legal nature of the interest it would have, given success, on the trial court's granting full recovery in this action. Respondent maintains Petitioner does not have this right. Finally, it is doubtful that Petitioner, granting standing and an assertion of some federal substantive right from its pleadings, has satisfied a condition precedent to the assertion of jurisdiction in cases of this type, i.e., exhausting its contractual remedies under the contract once existing between it and Respondent, *Republic Steel Corp.* v. *Maddox*, 379 U. S. 650.

2. Point II of Respondent's Brief deals with Petitioner's disregard for the national rule already present in the federal court system for resolving the problem raised by the existence of a federal statutory enactment where Congress fails to include or incorporate any applicable period of limitations. Such enactments covering a wide range of legislation have traditionally been governed by the applicable state period of limitations and the definition given these periods by the local courts. The reasoning behind this rule is to the effect that since Congress is silent the federal courts as a means of avoiding the anomaly of a legal right with no period of limitations, apply state law. In addition the courts infer that where Congress is silent, an intent was manifested to apply local law. Finally the

courts note that not only is a body of local law as to such issues readily available, but also these issues often have substantial contacts with the states and therefore apply such law as they determine state courts would have done had they been compelled to decide these cases. Respondent also urges that because this rule is long established it already supplies a type of uniformity in these cases and, perhaps, as much uniformity as can be expected in light of the fact that state courts now have concurrent jurisdiction over Section 301 actions with the federal courts under decisions of this Court in *Smith* v. *Evening News Association,* 371 U. S. 195. Ultimately, it is Respondent's position that a form of national uniformity already exists in this area under the rule stated in this section of its Brief and, thus, there is no need for a national formulation in this case and particularly so where Petitioner has advanced no really substantial policy reasons for such formulation.

3. Point III of Respondent's Brief deals with an assumption not accepted by it but taken for the purposes of argument only. This assumption is to the effect that: Given the fact of a need for a national formulation as to the period of limitations applicable to Section 301 actions, this formulation must be made with reference to prior decisions in this area, legislative history and practical or day-to-day facts of industrial life. Thus the few courts dealing with what period in theory would be applicable to these actions have expressed the view that the six-month period of limitations placed on the filing of unfair labor practice charges with the National Labor Relations Board should apply as provided in Section 10(b) of the Labor Management Relations Act. This is true because failure to use this period could well frustrate the policy of Congress in placing this limitation period on unfair labor practice charges given the fact that actions under 301 could well encompass such violations of Section 8(a) and 8(b) of the

Labor Management Relations Act. *International Union of Op. Eng.* v. *Fischbach and Moore, Inc.*, 350 U. S. F. 2d 936 (CCA-9, 1965); *Tully* v. *Fred Olson Motor Serv. Co.*, 134 N. W. 2d 393 ..... Wisc. ..... (1965). This position has additional support in the decisions of this Court relating to the self-evident policies of speed and stability built into the structure of national labor relations law *Local 1424, International Assoc. of Mach.* v. *N. L. R. B.*, 362 U. S. 411, as well as the legislative history of the Act itself wherein those in Congress most responsible for this legislation viewed its entire structure as but part of a whole. When these factors, therefore, are placed in proper prospective by adding the fact that the National Labor Relations Board as required by Section 9 of the Act must process representation petitions subjecting the collective bargaining relationship to statutorily sanctioned change, it becomes apparent that the period of limitations applicable to these actions must, of necessity, be brief. This is particularly so where collective bargaining contracts are usually of relatively short duration and any period of limitations of long duration would result in the use of suits under Section 301 either as a bargaining leverage or as a means of disrupting existing collective bargaining relationships.

4. Respondent, under Part IV of this Brief, deals with an analysis of the facts in the record in light of the rule as to the tolling of limitations applicable to actions under the Federal Employer's Liability Act formulated by this Court in *Burnett* v. *New York Central R. R. Co.*, 380 U. S. 424. This section of the Brief is concerned with two propositions. It is Respondent's position that the issue as to the tolling of any applicable period of limitations in this case is not properly before this Court because in the proceedings below the Petitioner neither introduced facts in the record to support any assertion of the issue, but in addition it never raised any issue concerning tolling under

state or federal law even though this theory was readily available to it at any stage in these proceedings. Therefore, to allow Petitioner this double privilege would not only substantially prejudice the rights of Respondent, but would in addition make concealment a rule of practice in the federal courts. *Virginia Ry. Co.* v. *Mullens,* 271 U. S. 220; *Safeway Stores, Inc.* v. *Oklahoma Retail Grocers Association, Inc.,* 360 U. S. 334. In any event any period of tolling must have, as it did in *Burnett* v. *New York Central R. R. Co.,* a reasonable basis as well as support in the record upon which it was formulated. It would seem under this view that Petitioner is hoist upon its own petard. If it admits that the state court action was brought under a different theory of recovery sounding in local law by different parties, it is clear that no legally acceptable tolling rule will save its action. This is especially so where the original action was actually discontinued voluntarily by the original plaintiffs, certain former employees of the Respondent, by their refusal to bring the action properly even though they were given every opportunity to do so and even though they were advised by the trial judge as to how the action should be brought. In addition, if Petitioner argues that the state action was identical in all respects that action would be *res judicata* as to this action. Finally, it is Respondent's position as to the necessity for a formulation as to tolling under Section 301 that Petitioner has once again failed to establish any policy considerations meriting formulation in this case, which should be compared on this issue with *Burnett* v. *New York Central R. R. Co.* or, in general, to any claim arising under statutes designed to shift the burden of loss for personal injuries to employers for humanitarian and economic reasons.

5. The final section of Respondent's Brief, Point V, is devoted to discussion of the proposition in Petitioner's Brief to the effect that all actions under Section 301 are

based exclusively on collective bargaining agreements. This is a faulty inference derived from this court decision in *Smith* v. *Evening News Association,* 371 U. S. 195. In the first instance the conclusion is that because of this Petitioner's action is governed by an Indiana period of limitations of twenty years applicable to actions brought on written contract. As a matter of policy and national uniformity following from policy, it would seem that at this point Petitioner's argument in one portion of its Brief runs against its twenty year position, since given a need for uniformity and in light of a congressional intent of speed and stability, it would seem somewhat unusual that Petitioner according to its own Appendix B attached to its Petition for a Writ of Certiorari should choose as the applicable period the longest state period of limitations extant for actions on contract in writing and not under seal. In addition, assuming part of Petitioner's argument as to the theory of its action, it is extremely difficult to accept its conclusion that its action is "exclusively" on a written collective bargaining agreement. A mere perusal of its complaint makes that document unintelligible without reference to both Indiana wage claims statutes including the provisions therein for statutory penalties and attorney's fees and, finally, the existence of an employment relationship resting on oral contract between Respondent and its employees. It must also be observed, that if Indiana law is assumed to be applicable to Petitioner's action it must under an abundance of authority be controlled by the Indiana period of limitations of six years applicable to contracts not in writing since under local law actions partly on written contract and partly sounding in parol are governed by this statute. Ultimately, it must be observed that the Labor Management Relations Act itself not only in Section 9 relating to representation matter and Section 2 relating to definitions, but also in Section 7 recognizes

that the employment relationship has a legally recognized existence independent of the collective bargaining agreement and that loss of the collective bargaining contract by termination of the relationship has no necessary legal or practical effect on the employment relationship. 29 U.S.C. §§ 152, 157, 159; *J. I. Case Co.* v. *NLRB*, 321 U. S. 332.

ARGUMENT.

I.

THE COURT BELOW DID NOT HAVE JURISDICTION.

Petitioner's complaint filed in the District Court (R. 3) alleges that its action is brought under "Section 301 of the Labor Management Relations Act, 1947, as amended, Title 29 U.S.C., Section 185 *et seq.* Jurisdiction of this cause is vested in this Court by virtue of said Act of Congress." After making allegations as to the collective bargaining agreement between Respondent and Petitioner as well as Respondent's refusal to pay vacation pay purportedly due, paragraph 10 of the complaint and the prayer for relief reads as follows:

> "10. That pursuant to the Acts of the General Assembly for the State of Indiana for the year 1911, Chapter 68, Sections 1 and 4 thereof and in accordance with the Acts of the General Assembly for the year 1933, Chapter 47, Section 2, there is due to the employees represented by the plaintiff an amount equal to double unpaid wages which amount is in excess of Eighty Thousand Dollars ($80,000.00).
>
> "Wherefore, the plaintiff asks judgment against the defendant corporation in the amount of Forty Thousand Dollars ($40,000.00) together with liquidated damages in the amount of Eighty Thousand Dollars ($80,000.00) together with a reasonable fee for plaintiff's attorney together with its costs and prays that the plaintiff may have such further relief as to the Court seems just." (R. 5).

The similarity between the allegations in the action filed by the Union and in the prior action filed on behalf of the individual employees is readily apparent. Although the

state court action set out in the Appendix to Petitioner's Brief is not in the record in this case, and as will be shown should not be considered by the Court in the determination of this case, the state court action was clearly one in which the individual employees, sought to bring a class action to recover their individual wage claims for vacation pay, statutory penalties and attorneys' fees. No relief whatever was sought on behalf of the Union or for anyone other than the individual employees. In the instant case the same thing is true. The Union is seeking to recover solely on behalf of the individual employees shown on Exhibit A of the complaint for vacation pay wages, and statutory penalties and attorney fees allowed solely under Indiana law. As a matter of fact, it has been held in Indiana that a cause of action based on the Indiana statutes pleaded in the complaint herein are personal to the individual employees and non-assignable. *McKenna* v. *Standard Oil Company,* 236 Ind. 370, 140 N. E. 2d 512 (1957). Under these circumstances it seems clear that the court below correctly on the basis of the allegations contained in Petitioner's complaint found "that the present suit frankly characterizes the choses in action involved as existing by virtue of the statutory law of Indiana." (R. 26).

As discussed at length in the dissent in and recognized by the Court in the majority opinion in *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, the major constitutional question concerning the validity of Section 301 was the possibility that were it nothing more than a naked grant of jurisdiction to federal courts it could be violative of Article III of the Constitution because cases brought under its provisions would in actuality involve matter only within the judicial cognizance of state courts. This is, of course, what Petitioner has attempted to do in this case in that it has alleged jurisdiction under Section 301, but bottomed its action on substantive rights created by state

law. Although the Petitioner in its Brief urges that its action is based upon federal substantive law because the action is brought under Section 301, it is clear from the complaint that the Petitioner is claiming that the individual employees are entitled to vacation pay, which it characterizes as a claim on behalf of the individual employees for wages so as to bring the employees within the purview of the Indiana wage claim statutes and enable them, if successful, to recover penalties and attorney fees. In other words, Petitioner is trying to negate the thrust of clearly indicated constitutional difficulties concerning actions brought under Section 301 by characterizing its action as one under national law even in the light of the fact that its own pleadings indicate this is not the case. It seems clear that the observation by the Court in *Smith* v. *Evening News Association,* 371 U.S. 195, to the effect that jurisdiction under Section 301 in the federal courts is not unlimited has cogent application to Petitioner.

Prior to the Court's decision in *Smith* v. *Evening News Association,* 371 U.S. 195, and under authority of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.,* 348 U.S. 437, this action could not be brought because a labor union could not bring an action on behalf of individual employees for personal rights, such as a wage claim. In *Smith* it was held that the authority of the National Labor Relations Board to deal with an unfair labor practice, which also violates a collective bargaining agreement, is not displaced by Section 301 nor is it exclusive and, therefore, a suit could be maintained in either a state or federal court for violation of this statutory provision. *Smith* was a state court action. The Court did go on to say, however, that an individual employee could bring a Section 301 action either in a state or federal court to enforce a wage claim. On the other hand, there is no dicta in the case as to whether or not the union itself could

bring an action here for purely personal rights of an employee. The wage claims are solely those of the individual employees based on an oral contract of employment as supplemented by a collective bargaining agreement. This issue was not presented in the *Smith* case, yet the record in *Smith* does show an assignment of the claims to the plaintiff. Here there is no showing of an assignment, nor is there anything in the record indicating any legal claim or real interest on the part of the Petitioner. Respondent urges here, as it did in the District Court and the Court below, that Section 301 did not give jurisdiction of this action under the peculiar facts here involved.

Another jurisdictional question is raised in this case. At page 11 of Petitioner's Petition for a Writ and in its Brief herein at page 14, it uses as authority a most recent case decided by this Court, *Republic Steel Corp.* v. *Maddox,* 379 U. S. 650. *Maddox* is but another expression of the express reasoning behind this Court's decisions in *Textile Workers Union* v. *Lincoln Mills of Ala.,* 353 U. S. 448, and *United Steelworkers of America* v. *Warrior & Gulf Nav. Co.,* 363 U. S. 574, to the effect that private settlement between the parties in accordance with grievance and arbitration procedures is in a preferred position.

In *Maddox* this Court reversed an Alabama state court's holding that the plaintiff (Maddox) was entitled to recover for breach of contract on the sole ground that plaintiff had failed to follow the grievance procedure as set forth in the contract between his employer and a labor union, and this even though the employer had gone out of business. The record in this case is more favorable to Respondent than it was to Republic Steel in the *Maddox* case, since, as shown by Exhibit A attached to Petitioner's complaint filed in the District Court, the contract between Petitioner and Respondent provided that "In order to become a matter for adjustment under the grievance procedure, the grievance

must be presented within five (5) working days after the employee or group of employees *or the union* has acquired knowledge of the act which is the basis of the grievance." (Emphasis supplied.) There is no reference in the record that Petitioner in this case filed a grievance, which would be necessary in order to give the court below jurisdiction to hear this case.

II.

IN THIS CASE THE LOWER COURTS CORRECTLY FOLLOWED THE STATE STATUTE OF LIMITATIONS SINCE NO FEDERAL LIMITATION WAS PROVIDED BY CONGRESS.

The issue concerning the applicable period of limitations, of course, springs from the fact that Congress not only has never enacted a general federal statute of limitations but that Congress failed to provide a period of limitations applicable to Section 301 actions. Is is the general rule that because the Rules of Decision Act, 28 U. S. C. Sec. 1652, provides that "the laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil cases in the courts of the United States in cases where they apply," federal courts uniformly apply the state period of limitations and its interpretation by state courts[1] to actions under federal statutory schemes wherein Congress has failed to provide a period.[2] The exception to this general rule, as contained in the Rules of Decision Act, is illustrated by cases such as *Hanna* v. *Plumer,* 380 U. S. 460, wherein an explicit federal law or congressionally authorized rule conflicted with and therefore prevailed over state laws.

1. *Moore* v. *Illinois Central Railroad Co.,* 312 U. S. 630.

2. For general discussion of time limitations and federal causes of action see Blume & George, "Limitations and the Federal Courts," 49 Mich. L. Rev. 937 (1951); Note, "Federal Statutes Without Limitations Provisions," 53 Colum. L. Rev. 68 (1953).

As early as 1830 this Court held that federal courts were required to apply state statutes of limitations to federal cases unless Congress has expressly provided otherwise, *MiCluny* v. *Silliman*, 3 Pet. 270, 28 U. S. 415. Numerous cases decided under federal statutes since that time have followed a similar course, *Cope* v. *Anderson*, 331 U. S. 461 (National Bank Act); *McClaine* v. *Rankin*, 197 U. S. 154 (National Bank Act); *Campbell* v. *Haverhill*, 155 U. S. 610 (Patent Act); *Swick* v. *Glenn L. Martin Co.*, 68 F. Supp. 863 (D. C. Md. 1946), *affirmed* 160 F. 2d 483 (CCA-4, 1947), *cert. den.* 232 U. S. 772 (Fair Labor Standards Act); *O'Sullivan* v. *Felix*, 233 U. S. 318 (Civil Rights Act); *Republic Pictures Corp.* v. *Kappler*, 151 F. 2d 543 (CCA-8 1945), *aff'd per curiam* 327 U. S. 757 (Anti-Trust Statutes). As has been pointed out by one observer, "the adoption of the state statutes seems so well established that the failure to designate a limitation period has been said to indicate a Congressional intention that state law be applied." Note, 76 Harv. L. Rev. 1306, 1307 (1963).[3]

These and other authorities are, of course, the *stare decises* relied upon in the few decisions dealing with the fact that this title of the *Labor Management Relations Act* contains no statute of limitations. In actions brought under Section 303 in *United Mine Workers* v. *Meadowcreek Coal Corp.*, 263 F. 2d 53 (CCA-6 1958), *cert. den.* 359 U. S. 1013, and *International U. of Op. Eng.* v. *Fischbach and Moore, Inc.*, 350 F. 2d 936 (CCA-9 1965), the courts were in agreement as to the application of the state period of limitations. Similarly in two cases decided under Section 301 the courts applied the local period of limitations. *Reliford* v. *Eastern Coal Corp.*, 260 F. 2d 447, 455 (CCA-6 1958), *cert. den.* 359 U. S. 958; *Tully* v. *Fred Olson Motor Serv. Co.*, 134 N. W. 2d 393, ... Wis. ..... (1965).

3. Also see Note, 60 Mich. L. Rev. 1164 (1962); Note, 110 U. Pa. L. Rev. 1165 (1962); Note, 64 W. Va. L. Rev. 442 (1962).

Petitioner argues that this Court should bar application of differing state standards and, instead, prescribe a uniform federal limitations for Section 301 actions (Pet. Br. pages 12 and 13).

Petitioner has shown no compelling reason in its brief supporting any departure from this general rule as it has been applied to a wide range of litigation under numerous federal statutes. It would seem that there is enough parity of public interest in civil rights, bank regulation, anti-trust problems and patents on the one hand and the Labor Management Relations Act on the other to indicate continuance of this rule of general application. This is particularly so where this rule supplies a type of uniformity due to its wide application and, in addition, as much uniformity as is possible given the fact of concurrent jurisdiction established in *Smith* v. *Evening News Association*, 371 U. S. 195.[4]

The danger of so-called forum shopping condemned by the Petitioner is just as prevalent in actions brought in the various states under these federal statutes as it would be in cases under Section 301, which risk is inherent in the federal system, particularly in view of the fact that concurrent jurisdiction has been established in *Smith* v. *Evening News*, 371 U. S. 195. Further, Petitioner has shown the wide divergence of periods of limitations in the various states throughout the country involving contract actions. This same wide divergence of state statutory periods of limitations in which a federal civil rights, federal antitrust actions, or other actions under federal statutes may be maintained exists, yet federal courts have no difficulty following the state statutory periods even though no federal limitation periods are contained in the federal statutes.

Certainly Congress is cognizant of the lack of uniformity with respect to the applicable statute of limitations under

4. See comments in Wellington, "Labor and the Federal System," 26 U. Chi. L. Rev. 542, 551 (1959).

the above acts as well as under Section 301 of the Labor Management Relations Act. However, it is apparently satisfied with the uniformity which exists in the well established rule that in such cases the state statute of limitations should apply and has not deemed it necessary or that the matter is of sufficient import to insert in any of said acts a federal period of limitations.

It is obvious that Petitioner's insistence upon a uniform federal statute of limitations in this case is a result of Petitioner's desire to escape the application of the Indiana statute of limitations. The Petitioner's action is clearly barred if these statutes apply. Petitioner argues that it should not be penalized in this action by the application of "local law philosophy of labor relations" (Pet. Br. p. 16), yet Petitioner has no difficulty in basing its claim on this philosophy or for that matter asking for the penalties and attorney fees provided by the Indiana wage claims statute.[5] We have already pointed out on page 11 of this brief that paragraph 10 of Petitioner's complaint and its prayer for relief is based squarely upon the Indiana wage claims statute. Under *Burns' Indiana Statutes Annotated, Section 2-602 (1),* a two year statute of limitations is applicable to actions brought for a forfeiture or penalty given by statute. As has been shown above, under Indiana law the wage claim statute creates a cause of action that is

5. Petitioner seeks to extricate itself from this predicament in a footnote at pages 9 and 10 of its brief by stating that the complaint alleges the action is brought under the provisions of Section 301 of the Labor Management Relations Act and that the recitation in the complaint of the Indiana statutes providing for double unpaid wages merely safeguards the benefit of any additional state remedy, but in any event the Section 301 suit could not become a state cause of action by virtue of the Petitioner's erroneous belief in that regard. The District Court and the Circuit Court below and the Respondent in this case must take Petitioner's complaint as it was presented, which is to recover wage claims for individual employees and specifically statutory penalties and attorney fees recoverable only by the individual employees and recoverable only under the Indiana statute.

personal and non-assignable and, therefore, personal to the individual employee asserting its violation. *McKenna* v. *Standard Oil Company,* 236 Ind. 370, 140 N. E. 2d 512 (1957).

Thus the Petitioner relies upon the Indiana statute as a basis of its recovery in this action yet would have this Court reject the application of the Indiana statutes of limitation. Petitioner, however, has no difficulty arguing finally in its brief at page 23 that if the Court rejects its plea to disregard the Indiana statute and its plea for a national uniformity, that the Indiana twenty year statute applicable to suits on contracts in writing should apply rather than the six year statute on contracts not in writing as found by the court below.

Finally, the Respondent suggests that if it is desirable that a uniform statute of limitations apply to Section 301 actions this condition should be corrected by Congress and not by a national formulation by this Court. It has been recognized by lower courts and writers on the subject, that where Congress has failed to establish a specific statute of limitations the void must be corrected by Congress itself, as it has done with respect to certain other federal statutes which originally were enacted without a statute of limitations, but which have since been amended to provide for federal limitations, *i.e.,* 35 U. S. C. 286 (Patent Act); 15 U. S. C. 15 (b) (Anti-trust Act).

III.

IF A NATIONAL FORMULATION UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT IS NECESSARY, THE SIX MONTHS PERIOD PROVIDED IN SECTION 10(b) OF SAID ACT SHOULD BE APPLIED.

The major portion of the Petitioner's Brief is devoted to a plea for national uniformity under Section 301 actions. It suggests that this end can be brought about by judicial creation of a period of limitations applicable to these cases. If a federally fashioned rule is to be applied, there is every reason to follow the rule embodied in the closely related Labor-Management Relations Act which in Section 10(b) provides that:

> ". . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board. . . ." 29 U. S. C. § 160(b).

This six-month limitation clearly reflects Congress' desire, where unfair labor practices are involved, to expedite the resolution of labor disputes by requiring that both the complaining party and the Labor Board act promptly. The Section 10(b) limitation recognizes that labor disputes, unlike many other types of legal disputes, occur in the context of continuing relationships and that those relationships can be disrupted and wholly undermined if the disputes linger and grow worse with time.[6] As this Court stated in *Local 1424, International Machinists* v. *NLRB*, 362 U. S. 411, 419, the "policies [underlying Section 10(b)]

6. See *Smith* v. *Evening News Association*, 371 U. S. 195, 202-203, where Justice Black in dissenting, pointed out that in Section 301 cases the application of a period of limitations longer than that provided in Section 10(b) of the Labor-Management Relations Act would open "up a way to defeat the congressional plan adopted over vigorous minority opposition, to expedite industrial peace by requiring that both the complaining party and the Board act promptly in the initiation of unfair labor practice proceedings."

are to bar litigation over past events 'after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused,' H. R. Rep. No. 245, 80th Cong., 1st Sess., p. 40, and of course to stabilize existing bargaining relationships."

When squarely confronted with the issue of the appropriate limitations period under Sections 301 and 303, two courts have urged with considerable force that the six-month period of limitations should apply in order to accord with the statutory design of the federal labor relations acts. *International U. of Op. Eng.* v. *Fischbach and Moore, Inc.*, 350 F. 2d 936 (C. A. 9, 1965); *Tully* v. *Fred Olson Motor Service Co.*,[7] 134 N. W. 2d 393, ... Wis. ..... (1965). Thus, in *International U. of Op. Eng.* v. *Fischbach and Moore, Inc.*, the Court of Appeals for the Ninth Circuit said:

> "There are strong reasons for the application of a six-month period, borrowed from § 10(b) of the LMRA. . . . We think it is neither logical, nor just, nor in keeping with the policy which Congress has thus far articulated in the field of labor relations that a six-month period shall limit the filing of a complaint with the Board and that some different period, be it based on latches or a different statute of limitations, shall operate to limit the time for commencing a suit for damages under Section 303 based upon the same alleged unfair labor practice. . . . Certainly the distinctions between a complaint before the NLRB over an unfair labor practice and a private suit for damages for the same grievances are not so significant as to eliminate the same pervasive considerations of public policy which demanded the quick disposition of labor management controversy." 350 F. 2d at 937-8.

Nevertheless, after thus considering the federal statutory scheme and noting that "in certain circumstances, alterna-

7. In this case, see also the well-reasoned lower court opinion which is reported at 50 L. C. P. 19, 198 (1965).

tives to the state periods of limitations may be adopted," the Court of Appeals felt constrained to conclude that: "But here, the statute itself, its legislative history, and the pressing weight of authority lead us to hold that California's three-year limitation statute should have been applied." *Id.* at p. 939. The legislative history indicates that application of a six month period would best implement Congressional policy in this area. As observed by Senator Taft, "It is impossible to separate them (the title in the Act). The Committee had difficulty even in separating matters as between titles, and moved some matters back and forth from one title to another." *2 Legislative History of the Labor-Management Relations Act* 1073 (1950). This inter-relationship is further explicated in Senate Report 105 on S. 1126 which asserts that "Section 301 is the only section contained in the title." (At that time, amendments were made later.) "It relates to suits for breach of collective bargaining agreements and should be read in connection with the provisions of Section 8 of Title I, also dealing with breach of contract."

Indeed, the interrelationship between contract actions under Sections 301 and unfair labor practices under the National Labor Relations Act was the fundamental subject reviewed by this Court in *Smith* v. *Evening News Association,* 371 U. S. 195, and, as the facts of that case clearly indicate, contract actions under Section 301 will frequently involve or overlap with matters that could be subjects for unfair labor practice complaints. It is particularly significant that the petitioner, while basically ignoring the interrelationship and overlap between Section 301 actions and unfair labor practice actions, has suggested that to follow the purposes of the federal statutory scheme the six-month limitation should be applied in Section 303 cases. Petitioner rejects the decision of the Ninth Circuit in

Fischbach and Moore, supra, as wrongly decided and recommends that:

> "Since suits under Section 303 are based on the same secondary boycott prohibitions which constitute unfair labor practices under Section 8(b)(4) of the Act, resort to the six-month limitation for charging a violation of that provision before the National Labor Relations Board would appear a more appropriate standard—one which would be uniform throughout the nation and carry out the manifest Congressional purpose." (Pet. Br. p. 20, note 6).

Surely, however, it would be unjust and arbitrarily discriminatory to apply the six-month period of limitations to contract actions arising under Section 303 for the reason that those actions involve overlapping or related unfair labor practices (secondary boycotts) and not to apply the same six-month limitation to contract actions arising under Section 301 where those actions do or may frequently involve related or overlapping unfair labor practices. Thus, for example, petitioner recognizes as it must that if there is to be a uniform federal rule, the six-month limitation of Section 10(b) should be applied in Section 303 contract actions because of that Section's close relationship to unfair labor practices under Section 8(b)(4), but petitioner would recommend some longer limitations period for a Section 301 case such as *Smith* v. *Evening News Association, supra,* where the very essence of the problem was that the contract action overlapped with possible unfair labor practices (also under Section 8).

We submit that if there is to be a uniform federal limitations rule for contract actions arising under Section 301 or under Section 303, the limitations rule must be guided by the history and purposes of its sources, namely, the interrelated federal labor laws, and, accordingly, must follow the Congressional plan embodied in Section 10(b) of the Labor Management Relations Act.

IV.

THERE IS NEITHER A NEED, NOR DO THE FACTS SUPPORT THE APPLICATION OF A TOLLING RULE IN THIS CASE.

Petitioner, having previously in its Brief urged the Court to adopt a Federal period of limitations for Section 301 actions under Point II of its brief, suggests that the statute of limitations in this case was tolled by the filing of the state court suit of *Johnson* v. *Hoosier Cardinal Corporation* under any statute of limitations of not greater than two years duration. (Pet. Br. pp. 20-22.) In order to advance this argument, Petitioner, we submit, has gone contrary to the well-established rules of this Court that prevent a litigant from presenting for consideration matters not in the record or not presented to the lower courts and shifting its theory of recovery as if to treat this Court as one of trial in the first instance. *Virginia Ry. Co.* v. *Mullens*, 271 U. S. 220; *Van Huffel* v. *Harkelrode*, 284 U. S. 225; *Helvering* v. *Wood*, 309 U. S. 344; *Safeway Stores, Inc.* v. *Oklahoma Retail Grocers Association, Inc.*, 360 U. S. 334.

The record in this case shows that although the Petitioner had ample opportunity in the District Court and in the Circuit Court below to introduce the record of the State Court action above, it did not choose to do so, but for the first time in this case had injected the pleadings and part of the records of the State Court case in this case by means of inserting these matters into the Appendix attached to its brief. The Petitioner even inserts as part of the record in the Trial Court a letter from the trial judge setting out the reasons for his ruling in the case below. (Pet. App., p. 9.) The record shows that the Petitioner filed its action herein in the District Court on April 8, 1964, and that the Respondent filed its motion to dismiss on May 4, 1964. This theory of tolling of the statute of

limitations which the Petitioner is now urging upon the Court for the first time is not a novel theory, nor did it have its origin in the case relied upon by the Petitioner, *Burnett* v. *New York Central R. R.*, 380 U. S. 424. This Court, in *Herb* v. *Pitcairn*, 325 U. S. 77, had considered this question at length.

Further, the Petitioner in its brief (Pet. Br. p. 23, footnote 9) suggests that it did not make the argument below of the timeliness of the suit under the Indiana Savings Statute[8] because the trial counsel for Petitioner did not think the Indiana statute of limitations applicable in this case, nor does the Petitioner now invoke this saving statute. The Indiana Supreme Court in 1957[9] held that the Indiana tolling statute does not toll the statute of limitations in an action improperly brought as a class action but that the statute continues to run until the proper action is brought. Under the foregoing, it is submitted that this Court should not consider the Petitioner's argument that regardless of the statute of limitations if it is not more than two years, the statute would have tolled.

The Respondent further submits that even should the Court consider that the record of the State Court action is properly before this Court, *Burnett* v. *New York Central R. R.*, 380 U. S. 424 would not toll the statute of limitations barring this action in any event.

It will be noted that the plaintiffs in the state court action relied upon by Petitioner were certain individual employees who attempted to bring the action on behalf of themselves and as members of a class representing the former employees of the Respondent (Pet. App. p. 23), while in this case the plaintiff is the Petitioner herein, the

8. Burns' Indiana Statutes Annotated, Section 2-608 (1946 Replacement).

9. *City of Hobart* v. *Baum*, 145 N. E. 2d 573, 237 Ind. 316; *Hawthorn et al* v. *The State, Ex Rel. Harper*, 57 Ind. 286 (1877).

International union, seeking to recover on behalf of the individual employees the same alleged claims for vacation pay, double damages and attorney fees. This is a different situation than existed in the case of *Burnett* v. *New York Central R. R.*, 380 U. S. 424, where the parties were identical in both the state court case and the case subsequently filed in the federal court.

Further, in the *Burnett* case the action was dismissed in the state court because of improper venue whereas in this case the state court action was denied because it was improperly brought as a class action, but the trial court pointed out that the individual employees each had the right to maintain his own individual action in his own name (Pet. App. p. 10). The Petitioner urges elsewhere in its brief that by reason of this Court's decision in *Smith* v. *Evening News Association*, 371 U. S. 195, the union now has the right under Section 301 to maintain this action on behalf of the individual employees to recover wages, statutory damages and attorney fees, and claims that this right is given under a new federal substantive law. Under this argument, clearly the action filed in the state court below could not be the same action as the Petitioner is now asserting in this action. If Petitioner is seriously urging that the suit filed below is the same suit that is pending before this Court in order to attempt to toll the applicable statute of limitations, then the Petitioner is faced with the plea that the state court action is res judicata.

The Petitioner in this case suggests that a tolling principle which this Court adopted in the *Burnett* case should also be adopted in this case. Although this Court, under the facts in *Burnett* v. *New York Central R. R.*, 380 U. S. 424, formulated a tolling rule to the effect that dismissal for improper venue under a FELA action brought in a state court tolls the federal three year statute of limitations, at footnotes 8 and 9 of its opinion, it pointed out that

most states have statutes that allow transfer of cases for improper venue as well as statutes providing for a so-called saving period, and under Ohio law as well as forty-four other states, causes of action are preserved by these methods. This decision also mentioned the humanitarian purpose behind the statute. The Court, based on the facts in that case, came to the conclusion that in light of the purpose of the statute the need for a tolling formula was justified.

The circumstances of this case, it is submitted, do not warrant tolling under any applicable statute of limitations. As has been pointed out, the state court action was filed by certain individual employees as a class action on February 21, 1958. After the court sustained the demurrer to the third amended complaint, holding that this was not a class action, and after pointing out that the employees could individually maintain their own action, the employees in said state court case refused to plead over and thereby permitted judgment to be taken against them (Pet. App. p. 32). No action was thereafter filed by any of the individual employees although at that time they had the right and ample time under the Indiana law to do so. Thereafter an appeal was taken to the Indiana Appellate Court but was dismissed on April 18, 1963 because of the failure of the plaintiffs to properly perfect such appeal. It should be noted here, however, that in the meantime and on December 10, 1962, this Court rendered its decision in *Smith* v. *Evening News Association*, 371 U. S. 195, upon which the Petitioner justifies its present action. Nevertheless, the Petitioner waited until April 8, 1964, a period of more than eleven months after the judgment in the state court became final, before instituting this case in the District Court below.

Further, the tolling which Petitioner seeks would place the Respondent, or any other litigant, in the position of

having a case resurrected, after the statute had run, because of a new decision handed down which would have the effect of retroactively tolling the statute, long after a company has discontinued its manufacturing business and at a time when no witnesses or records might be available because of the lapse of time (almost nine years in this case). None of the opinions of this Court indicate support for such a rule. There is nothing in the record in this case showing inequitious conduct, undue hardship or policy considerations meriting a formulation. Although it has been the modern trend toward a preference for suits on the merits, Petitioner has advanced no compelling reason for such action in this case, and it must be added that there is general law to the effect that where different parties bring a cause of action under shifting theories of recovery which has been dismissed in another jurisdiction for refusal to plead further the new parties can make no claim of tolling. *34 Am. Jur., "Limitation of Action,"* §§ 268, 269, pp. 220-21; § 271, pp. 221-22; § 267, pp. 219-20; § 288, pp. 232-33; *54 C. J. S., "Limitation of Actions,"* § 289, p. 353, § 290, p. 354, § 293, p. 362.

V.

A STATUTE OF LIMITATIONS GOVERNING WRITTEN CONTRACTS DOES NOT APPLY IN THIS CASE.

Petitioner takes the position in its Brief, at pages 22-24, that in any event this matter is controlled by an Indiana statute of limitations of twenty years duration. In suggesting this result it is urged that considerations of national uniformity require the adoption of this result when considered in light of the policy of Congress in passing the Labor Management Relations Act. The Indiana period of limitations of twenty years is the longest period of limitations in this country concerning actions on written con-

tracts under seal. (See App. B attached to Petition for Writ.) Given this fact, it would seem that Petitioner's argument as to the application of the Indiana twenty year period runs against the import of its argument as to the need for national uniformity based on the policy behind Congressional enactment of Section 301 of the Act. On the one hand Petitioner would have it that a policy of national uniformity requires application of the uniform and nationwide period of limitations to Section 301 actions, while on the other it urges application of the longest local period available, thereby accepting the very premise it argues should be disregarded in these cases—application of varying state period of limitations as applied by the courts in the various states.

In addition, the so-called preference for national formulation urged by Petitioner would indicate in light of the legislative history, court decisions analyzing the Labor Management Relations Act and the Act itself as set forth above gives abundant support for the proposition that a limitation period of twenty years would clearly work at cross purposes with the entire body of currently recognized principles applicable to federal labor law, among which are, of course, those of stability and dispatch.

Here, as elsewhere in its Brief, Petitioner assumes that its action is based "exclusively" on a written collective bargaining agreement (Pet. Brief, page 24). In the first instance, if this be so, it is extremely difficult to read Petitioner's complaint filed in the District Court without coming to a contrary conclusion. One only need scan paragraphs 7 through 10 of this complaint (R. 4-5) to be met with the premises that at the very least Petitioner's action not only stems from the fact that "the defendant corporation discontinued employment of the employees whose names are set out in the aforesaid Exhibit 'B'," but, in addition, from the existence of both employment records

and certain Acts of the General Assembly for the State of Indiana (R. 3-5). In fact, Petitioner's request for relief is unintelligible unless resort be made to the statutory law of the State of Indiana.

In sum, the allegations in Petitioner's complaint at trial on the merits would have to be supported not only by recourse to a great deal of parol evidence supporting the existence of an employment relationship between Respondent and its employees, which fact is not found within the four corners of the collective bargaining agreement, but also to the laws of the State of Indiana as to the existence of wage claim statutes and the provisions in these statutes for recovery of penalties and attorney fees.

This is, of course, why the trial court granted Respondent's motion to dismiss since the uncontroverted evidence before it in the form of the affidavit of Respondent's president (R. 11) shows that these employees worked under contracts of employment that were "verbal or oral." Therefore, under Indiana law, the gravamen of Petitioner's action for wages due and statutory penalties coupled with attorney fees, necessarily depended on the use of parol evidence. Under Indiana law in actions partly based on a written collective bargaining agreement, or other written contracts, and partly on oral or parol contracts of employment, or other oral or parol contracts, are governed by a six year period of limitations applicable to actions on contracts not in writing.[10]

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10. *Albrecht* v. *Indiana Harbor Belt R. Co.*, 178 F. 2d 577 (CCA-7 1949); *Kordewick* v. *Indiana Harbor Belt R. Co.*, 157 F. 2d 753 (CCA-7 1946), cert. den. 329 U. S. 806; *Michael* v. *Rainer*, 205 N. E. 2d 543, ... Ind. .... (1965); *Board of Commissioners of Marion County* v. *Shipley*, 77 Ind. 553 (1887); *Carskaddon* v. *City of South Bend*, 141 Ind. 596, 39 N. E. 667 (1895); *Moore* v. *Ohl*, 65 Ind. App. 691, 116 N. E. 9 (1917); *Hackleman* v. *Board of Commissioners of Henry County*, 94 Ind. 36 (1889); *Tomilson* v. *Briles*, 101 Ind. 538, 1 N. E. 63 (1885); *Higham* v. *Harris*, 108 Ind. 246, 8 N. E. 255 (1886); *6 Indiana Law Encyclopedia*, "Contracts" § 51, p. 110; *19 Indiana Law Encyclopedia*, "Limitations of Actions," § 21, p. 17.

Petitioner's main contention, that this is a contract in writing and, therefore, the twenty year statute would apply, is based on the premise that *Smith* v. *Evening News Association*, 371 U. S. 195, rejected the individual contract of employment theory contained in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437, and, therefore, automatically made all actions involving a collective bargaining agreement under Section 301 an action on a written contract. In the *Smith* case no question of a statute of limitations was involved, as is involved in this case, nor was there any indication as to the type of employment contract which the individual employees had with the employer, nor does *Smith* say that in order for an employee to recover his rights must be based solely on the written collective bargaining agreement. *Smith* simply held that if employees' rights were in any way based on a collective bargaining agreement the employees would have a standing in a state or federal court to prosecute an action under Section 301, but it did not discuss the situation where the contract of employment was oral, supplemented by the written collective bargaining agreement, as is the case here.

There may well be cases in which the individual employees signed written employment contracts with the employer and which contracts would also be supplemented by a written collective bargaining agreement. However, such is not the case here and the affidavit of Respondent's president attached to the motion to dismiss shows, as pointed out above, that the employment contracts with the employees were not written contracts but were verbal or oral contracts. It will be noted the Petitioner did not controvert this affidavit.

Mr. Justice Jackson formulated what has been identified as the "eclectic" theory of the employment relationship as it relates to a collective bargaining agreement by stating:

> "Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the representative of the unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone." *J. I. Case Co.* v. *NLRB*, 321 U. S. 332.

See also *MacKay* v. *Loew's, Inc.*, 182 F. 2d 170 (1950), cert. den. 340 U. S. 828; reh. den. 340 U. S. 885; *Kosley* v. *Goldblatt Bros., Inc.*, 251 F. 2d 558 (CCA-7, 1958), cert. den. 357 U. S. 904. Although the theory has been subject to some criticism, it is clear that the very structure of the Labor Management Relations Act itself recognizes the fact that the employment relationship is of an essentially tripartite nature where an employer has a collective bargaining agreement. Thus, Section 2(3) of the Act, 29 U. S. C. A. 152, defines the term "employee" without reference to a collective bargaining agreement, Section 2(2) of the Act defines the term "employer" without reference to a collective bargaining agreement, and Section 2(4) defines the term "representative" without reference to the term "collective bargaining agreement". In sum, Section 2 of the Act, containing the definitions of the terms used in the Act, makes no reference to the existence of a collective bargaining agreement as a condition precedent to the existence of an employer, the employment relationship or for that matter of an employee representative, clearly inferring that none of these relationships or statutes has its origins in such an agreement.

The court below correctly held that the six year statute of limitations applied in this action. Incidentally, the court's attention is called to the fact that a two year

statute of limitations applies to an action to recover penalties under the Indiana statute (Res. App. p. 2). Inasmuch as Petitioner is seeking recovery of statutory penalties in its complaint the lower court could have held that the two year statute applied in this case rather than the six year statute because Petitioner coupled with the claim for wages the claim for statutory penalties. In view of its decision, however, it was not necessary to reach this point.

CONCLUSION.

For the foregoing reasons Respondent respectfully submits that the judgment below should be affirmed.

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January, 1966.

APPENDIX.

40-102. Semimonthly payment — Penalty and damages. —Every such person, firm, corporation or association who shall fail to make payment of wages to any such employee, as provided in section one [§ 40-101] of this act, shall, as liquidated damages for such failure, pay to such employee for each day that the amount due to him remains unpaid ten [10] per cent of the amount due to him in addition thereto, not exceeding double the amount of wages due, and said damages may be recovered in any court having jurisdiction of a suit to recover the amount due to such employee, and in any suit so brought to recover said wages, or the liquidated damages for nonpayment thereof, or both, the court shall tax and assess as costs in said case a reasonable fee for the plaintiff's attorney or attorneys [Acts 1933, ch. 47, § 2, p. 371].

40-104. Weekly payment.—Every corporation, association, company, firm or person engaged in this state in mining coal, ore or other mineral, or quarrying stone, or in manufacturing iron, steel, lumber, staves, heading, barrels, brick, tile, machinery, agricultural or mechanical implements, or any article of merchandise, shall pay each employee of such corporation, company, association, firm or person, if demanded, at least once every week, the amount due such employee for labor, and such payments shall be in lawful money of the United States, and any contract to the contrary shall be void [Acts 1911, ch. 68, § 1, p. 110].

40-105. Weekly payment — Penalty and damages. — Every corporation, company, association, firm or person who shall fail for ten [10] days after demand of payment

has been made to pay employees for their labor, in conformity with the provisions of this act [§§ 40-104-40-109], shall be liable to such employee for the full value of his labor, to which shall be added a penalty of one dollar [$1.00] for each succeeding day, not exceeding double the amount of wages due, and a reasonable attorney's fee, to be recovered in a civil action and collectable without relief [Acts 1911, ch. 68, § 4, p. 110].

2-601. *Limitation of actions—Six-year Statute.*—The following actions shall be commenced within six (6) years after the cause of action has occurred, and not afterwards.

First. On accounts and contracts not in writing. . . . (Acts 1881 (Spec. Sess.) Ch. 38, § 37, p. 240; 1951; Ch. 301, § 1, p. 999.)

2-602. *Limitation of actions.—Two, five, six, ten and twenty years.*—The following actions shall be commenced within the periods herein.

First. For injuries to person or character, for injuries to personal property, and for a forfeiture of penalty given by statute, within two (2) years. . . .

Sixth. Upon contracts in writing other than those for the payment of money within twenty (20) years. . . . (Acts 1881 (Spec. Sess.), Ch. 38, § 38, p. 240; 1951, Ch. 301, § 2, p. 999.)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner.*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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IN THE

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OCTOBER TERM, 1965

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

The core of petitioner's argument to this Court rests upon the uniformity purpose of Section 301 of the Labor-Management Relations Act, which precludes the applicability of 50 different limitations to suits under this uniquely national enactment. In answer to that central argument, respondent's brief merely recites previous rulings of this Court where (in the absence of such compelling uniformity considerations) local limitations have been adopted as the standard for suit under a federal statute. Respondent thus fails to answer petitioner's basic contention for this Court's preferment of uniformity over dissonance in the elaboration of Section 301. This short response is therefore limited

to the clarification of certain collateral points raised by respondent's brief.

1. Respondent first asserts (Brief, pp. 11-15) that this action is not within the jurisdiction conferred by Section 301 because it is a suit for vacation pay due individual employees and is thus based upon "substantive rights created by state law". Much is made of the fact that in the concluding paragraph of the petitioner's complaint there are cited the Indiana statutes permitting recovery of double unpaid wages. But, as we have indicated (Brief for Petitioner, p. 9, n. 1), neither did petitioner by that recitation characterize this Section 301 suit as one based upon state law, nor could it effectively have done so in view of *Smith* v. *Evening News Assn.*, 371 U.S. 195.

Equally unavailing is respondent's distinction of *Evening News* (Brief, pp. 13-14) as a case involving a suit by an individual employee whereas in this case brought by the union "there is no showing of an assignment, nor is there anything in the record indicating any legal claim or real interest on the part of the Petitioner." But this case is here on a motion to dismiss the complaint and there is no occasion at this stage for an evidentiary showing of the union's "legal claim or real interest." Nor is it credible to suggest, as respondent in essence urges, that Section 301 actions may be commenced only by individual employees and not by their union. Subsection (a) of Section 301 expressly authorizes "suits for violation of contracts between an employer and a labor organization representing employees . . .". Taken together with the "sue or be sued" language of subsection (b), it seems incontestable that unions do have standing to sue under Section 301 not only to redress direct union rights under the collective contract, but equally to secure the contractual rights of the employees which the union has won in collective bargaining.

2. For the first time in this litigation the company suggests (Brief, p. 14) that the union failed to invoke available grievance machinery under the contract, making it "doubtful" (Brief, p. 5) that the rule in *Republic Steel Corp* v. *Maddox,* 379 U.S. 650, has been met. This point not having been presented in the company's motion to dismiss, there is no record here to test whether the grievance machinery of the contract was available and was invoked prior to the institution of litigation in the Indiana courts on February 21, 1958 (see Brief for Petitioner, Appendix, p. 1). If the Court reinstates this action, as we urge, the pertinent facts in regard to the grievance procedure may be brought out if and when the company pleads the *Maddox* defense.

For the information of the Court, however, we can state that the contract grievance machinery was not in fact available for invocation by the union. The company finally ceased its Evansville production operations covered by the contract with the union on June 28, 1957. Its work force was thereupon disbanded and operating officials left the State. At a meeting on June 25, 1957, the company assured the union that it would grant the vacation pay due the employees and would issue checks in the following January, when, in its view, such payment was due. However, when a group of employees went to the premises on January 2, 1958, they were informed that the company was not in operation and no payment would be made. Thus, when the company made manifest its violation of the contract in January of 1958, it had ceased its operations for six months, and had actually transferred its assets from the State. The working relationship had terminated, there was no practicable means for invoking the grievance procedure, and the Indiana suit was filed in February of 1958.[1]

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[1] The complaint filed in the Indiana court asked for the appointment of a receiver. As set forth in the complaint (Brief for Petitioner, Appendix, p. 3), a receiver was required on the grounds that "defendant

3. Respondent also suggests (Brief, pp. 6, 17) that uniform limitations under Section 301 should not be prescribed by this Court because the present range of limitations variance in the 50 states provides "as much uniformity as can be expected in light of the fact that state courts now have concurrent jurisdiction over Section 301 actions . . .". But this hypothesis assumes the continuing applicability of local limitations to Section 301 suits when commenced in state courts even if this Court establishes, as we urge, uniform Section 301 limitations standards. This hypothesis is erroneous; uniform federal law requirements of Section 301 apply whether the suit be in a federal or in a state court. *Local 174 Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95; *Charles Dowd Box Co.* v. *Courteney*, 368 U.S. 502.

4. Respondent next suggests (Brief, pp. 20-23) that if uniform national limitations standards are to be fashioned for Section 301 suits, this Court should adopt the 6 month period under Section 10(b) of the Act for filing Labor Board charges. We agree that in suits under Section 303 of the statute resort to the 6 month limitation may be appropriate, since the monetary cause of action there recognized is premised upon the *same* substantive right as is safeguarded by Section 8(b)(4). But unlike Section 303, suits under Section 301 are *not* based upon rights secured in Section 8 of the Act. Tortious and discriminatory conduct—not con-

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corporation is in imminent danger of insolvency and has in fact discontinued many of its operations in this state; and that defendant has transferred many of its assets to the Mimosa Corporation in South Carolina and beyond the jurisdiction of the Indiana courts; that defendant's assets remaining in the jurisdiction of the Indiana courts are now advertised for sale; that all security for the protection of these plaintiffs' liens for wages is in danger of dissipation and distribution; that unless said remaining assets are impounded or otherwise protected from dissipation and distribution, the plaintiffs herein and all the members of the class represented by them will be prevented from achieving any practical satisfaction of their claims."

tract violation—is proscribed by Section 8. The difference between the predicates of a contract suit under Section 301 and of unfair labor practice proceedings is amply illuminated in this Court's *Evening News* decision. There is no more reason for subjecting contract suits under Section 301 to unfair labor practice time limitations than for the subjection of Section 301 suits to unfair labor practice preemption, which this Court emphatically rejected in *Evening News*.

5. Respondent objects (Brief pp. 24-27), on the ground that the contention was not made in the courts below, to the union's request for a tolling of limitations under the principle of *Burnett* v. *New York Central R.R.*, 380 U.S. 424. But petitioner was not required to anticipate this Court's 1965 ruling in *Burnett* (see Brief for Petitioner, p. 21, n. 7). In any event, the tolling argument would have had no practical impact below, since the Court of Appeals *rejected* the federal uniformity premise upon which we base our request for national limitations and tolling under Section 301. Consistent with our argument for uniform limitations under Section 301, we also urge (Brief for Petitioner, pp. 20-22) application here of the tolling principle of *Burnett*, fashioned by this Court to preserve federal uniformity under the FELA. But the court below having rejected uniformity under its "state cause of action" rationale, it has necessarily rejected the premise upon which we urge the application of the *Burnett* rule. Accordingly, no practical consequence would have flowed from the anticipatory presentation of the *Burnett* tolling rule in the lower courts, no occasion arises for a remand on that question, and the issue is ripe for this Court's adjudication.

6. In its concluding point (Brief, pp. 28-33), respondent seeks to buttress the "individual contract of employment"

thesis by which the lower court applies the Indiana limitation statute governing oral contracts. In this connection respondent cites Indiana decisions (Brief, p. 30, n. 10) holding that suits based partially upon written and partially upon verbal contracts are subject to the Indiana oral contract limitation. But there is no need for recourse to any oral contract of employment in the present case, which is based exclusively upon the written collective bargaining agreement's guarantees of vacation pay for "employees" (R. 5-7). While the individual employees are not named in the collective contract, there is no need for recourse to any oral contracts or evidence even if employment status could conceivably become an issue at the trial. Employee status may be shown by such purely written evidence as payroll, withholding tax forms, personnel records, and the like. No cited Indiana ruling has held that mere recourse to written matter subjects a suit on a written agreement to the oral contract limitation. In any event, even if recourse to individual contracts of hire *were* required to prove "employee" status, still this action would not be "based upon" individual contracts of hire rather than upon the collective contract.

Finally (see Brief for Petitioner, pp. 22-24), whatever may be the thrust of Indiana decisions, the individual contracts of employment thesis necessarily falls before the federal rule found in this Court's *Evening News* decision. There the Court rejected the viability of the "individual contract of hire" principle under Section 301 of the Labor-Management Relations Act.

Thus, respondent fails in its effort to transform a suit on a collective bargaining agreement's vacation pay provisions into a suit resting on individual contracts of hire. Instead of validating the decision below, the states rights argument merely underlines the necessity for rejection of

individualized state rules in favor of uniform national limitations periods and principles under Section 301 of the Labor-Management Relations Act.

Respectfully submitted,

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(7330-4)

SUPREME COURT OF THE UNITED STATES

No. 387.—October Term, 1965.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Petitioner, *v.* Hoosier Cardinal Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March 24, 1966.]

Mr. Justice Stewart delivered the opinion of the Court.

Section 301 of the Labor Management Relations Act of 1947 confers jurisdiction upon the federal district courts over suits upon collective bargaining contracts.[1] Nowhere

[1] We use the term "collective bargaining contracts" for convenience only, and do not intend to suggest that § 301 is limited to such contracts. See *Retail Clerks* v. *Lion Dry Goods*, 369 U. S. 17. Section 301 provides:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as

in the Act, however, is there a provision for any time limitation upon the bringing of an action under § 301. The questions presented by this case arise because of the absence of such a provision.

The petitioner union and the respondent company were parties to a collective bargaining contract within the purview of § 301. The contract contained a section governing vacations. One clause in this section dealt with payment of accumulated vacation pay, by providing: "Employees who qualified for a vacation in the previous year and whose employment is terminated for any reason before the vacation is taken will be paid that vacation at time of termination." On June 1, 1957, prior to the expiration of the contract, the company terminated the employment of employees covered by the agreement, but it did not pay them any accumulated vacation pay. Since that date, two lawsuits have been brought to recover amounts allegedly due. The first was a class action in early 1958, brought against the company in an Indiana court, but the court ruled that such

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an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." 61 Stat. 156–157, 29 U. S. C. § 185.

an action was impermissible under Indiana law. In an attempt to remedy this pleading defect, the former employees assigned their vacation pay claims to a union representative who then filed an amended complaint, but this form of action, too, was held improper under Indiana law. Thereafter, by further amended complaints, the employees sought to reform and reinstitute the class action, but once again the trial court held the complaint insufficient as a matter of state law. The court dismissed the suit in June 1960, and the judgment of dismissal was affirmed on appeal. *Johnson* v. *Hoosier Cardinal Corp.*, 134 Ind. 477, 189 N. E. 2d 592.

Almost four years after the dismissal of that lawsuit by the Indiana trial court, and almost seven years after the employees had left the company, the union filed the present action in the United States District Court for the Southern District of Indiana. On the company's motion, the trial court dismissed the complaint, concluding that the suit was barred by a six-year Indiana statute of limitations. The court regarded this action as based partly upon the written collective bargaining agreement and partly upon the oral employment contract each employee had made, and it held that Indiana would apply to such a hybrid action its six-year statute governing contracts not in writing. Burns' Ind. Stat. Ann. (1946 Repl.) § 2–601 (Supp.). 235 F. Supp. 183. The Court of Appeals for the Seventh Circuit affirmed, 346 F. 2d 242, and we granted certiorari, 382 U. S. 808.

We note at the outset that this action was properly brought by the union under § 301. There is no merit to the contention that a union may not sue to recover wages or vacation pay claimed by its members pursuant to the terms of a collective bargaining contract. Such a suit is among those "[s]uits for violation of contracts between an employer and a labor organization" that § 301 was designed to permit. This conclusion is unimpaired

by the fact that each worker's claim may also depend upon the existence of his individual contract of employment. See *J. I. Case Co.* v. *Labor Board*, 321 U. S. 332, 335–336. In *Smith* v. *Evening News Assn.*, 371 U. S. 195, we rejected the view, once held for varying reasons by a majority of this Court, *Association of Westinghouse Salaried Employees* v. *Westinghouse Corp.*, 348 U. S. 437, "that § 301 did not give the . . . courts jurisdiction over a suit brought by a union to enforce employee rights . . . characterized as . . . arising 'from separate hiring contracts between the employer and each employee.'" 371 U. S., at 198. Although the *Smith* case was brought by an individual worker, there is every reason to recognize the union's standing to vindicate employee rights under a contract the union obtained. Such recognition is fully consistent with the language of § 301 (b): "Any . . . labor organization may sue . . . in behalf of the employees whom it represents in the courts of the United States." 61 Stat. 156, 29 U. S. C. § 185 (b).[2] And indeed, the union's standing to vindicate employee rights under § 301 implements no more than the established doctrine that the union's role in the collective bargaining process does not end with the making of the contract.[3]

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[2] See also Rule 17 (a) of the Federal Rules of Civil Procedure; *Dowd Box* v. *Courtney*, 368 U. S. 502, 504; *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U. S. 593.

[3] See, *e. g.*, *Conley* v. *Gibson*, 355 U. S. 41, 46; Comment, 28 U. Chi. L. Rev. 707, 716.

That the employees in this case did not assign their claims to the union presents no barrier to the union's standing to sue in their behalf. Such a technical requirement would conflict with one of the widely recognized purposes of Congress in enacting § 301—the elimination of common-law procedural obstacles to suits for breach of collective bargaining agreements. See, *e. g.*, *Textile Workers* v. *Lincoln Mills*, 353 U. S., at 451. Meltzer, The Supreme Court,

Since this suit was properly brought under § 301, the question of its timeliness is squarely presented. It is clearly a federal question, for in § 301 suits the applicable law is "federal law, which the courts must fashion from the policy of our national labor laws." *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, 456. Relying upon that statement and upon the coordinate principle that "incompatible doctrines of local law must give way to principles of federal law," *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95, 102, the union contends that this suit cannot be barred by a statute of limitations enacted by a State. We are urged instead to devise a uniform time limitation to close the statutory gap left by Congress. But the teaching of our cases does not require so bald a form of judicial innovation. *Lincoln Mills* instructs that, in fashioning federal law, the "range of judicial inventiveness will be determined by the nature of the problem." 353 U. S., at 457. We do not question that there are problems so vital to the implementation of federal labor policy that they will command a high degree of inventiveness from the courts. The problem presented here, however, is not of that nature.

It is true that if state limitations provisions govern § 301 suits, these suits will lack a uniform standard of timeliness. It is also true that the subject matter of § 301 is "peculiarly one that calls for uniform law." *Teamsters Local* v. *Lucas Flour*, *supra*, at 103. Our cases have defined the need for uniformity, however, in terms that are largely inapplicable here:

> "The possibility that individual contract terms might have different meanings under [two systems of law] would inevitably exert a disruptive influence upon both the negotiation and administration of col-

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Congress, and State Jurisdiction Over Labor Relations: II, 59 Col. L. Rev. 269.

lective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might some day be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.

". . . The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace. State law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal labor policy." *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95, 103–104.

The need for uniformity, then, is greatest where its absence would threaten the smooth functioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it. For the most part, statutes of limitations come into play only when these processes have already broken down. Lack of uniformity in this area is therefore unlikely to frustrate in any important way the achievement of any significant goal of labor policy. Thus, although a uniform limitations provision for § 301 suits might well

constitute a desirable statutory addition, there is no justification for the drastic sort of judicial legislation that is urged upon us.[4] See *Smith* v. *Evening News, supra,* at 203 (BLACK, J., dissenting).

That Congress did not provide a uniform limitations provision for § 301 suits is not an argument for judicially creating one, unless we ignore the context of this legislative omission. It is clear that Congress gave attention to limitations problems in the Labor Management Relations Act of 1947; it enacted a six-months' provision to govern unfair labor practice proceedings, 61 Stat. 146, 29 U. S. C. § 160 (b), and it did so only after appreciable controversy.[5] In this context, and against the background of the relationship between Congress and the courts on the question of limitations provisions, it cannot be fairly inferred that when Congress left § 301 without a uniform time limitation, it did so in the expectation that the courts would invent one. As early as 1830, this Court held that state statutes of limitations govern the timeliness of federal causes of action unless Congress has

[4] Our cases have spoken of the federal law applicable to § 301 suits as "substantive," see, *e. g., Textile Workers* v. *Lincoln Mills,* 353 U. S., at 456, and the need for uniformity in the "substantive principles" that govern these suits. See *Teamsters Local* v. *Lucas Flour Co.,* 369 U. S., at 203. In the view we take of the problem presented here, we need not decide whether statutes of limitations are "substantive" or "procedural." See *Guaranty Trust Co.* v. *York,* 326 U. S. 99; *Burnett* v. *New York Central R. Co.,* 380 U. S. 424, 427, note 2. Nor need we rigidly classify them as "primary" or "remedial." To the extent that these terms are useful, we need only notice that lack of uniformity in limitations provisions is unlikely to have substantial effect upon the private definition or effectuation of "substantive" or "primary" rights in the collective bargaining process. See Wellington, Labor and the Federal System, 26 U. Chi. L. Rev. 542, 556–559.

[5] Compare, *e. g.,* the remarks of Senator Wagner, 93 Cong. Rec. 3323, and those of Senator Murray, 93 Cong. Rec. 4030, with the remarks of Senator Smith, 93 Cong. Rec. 4283.

specifically provided otherwise. *McCluny* v. *Silliman* 3 Pet. 270, 277. In 1895, the question was re-examined in another context, but the conclusion remained firm. *Campbell* v. *Haverhill,* 155 U. S. 610. Since that time, state statutes have repeatedly supplied the periods of limitations for federal causes of action when federal legislation has been silent on the question.[6] *E. g., McClaine* v. *Rankin,* 197 U. S. 154, *Cope* v. *Anderson,* 331 U. S. 461 (National Bank Act); *Chattanooga Foundry* v. *Atlanta,* 203 U. S. 390 (Sherman Act); *O'Sullivan* v. *Felix,* 233 U. S. 318 (Civil Rights Act of 1870); *Englander Motors, Inc.* v. *Ford Motor Co.,* 293 F. 2d 802 (C. A. 6th Cir.) (Clayton Act) but see *Holmberg* v. *Armbrecht,* 327 U. S. 392 (Federal Farm Loan Act). Yet when Congress has disagreed with such an interpretation of its silence, it has spoken to overturn it by enacting a uniform period of limitations. *E. g.,* 69 Stat. 283, 15 U. S. C. § 15 (b) (Clayton Act); 35 U. S. C. § 286 (Patent Act). See also *Herget* v. *Central Bank Co.,* 324 U. S. 4. Against this background, we cannot take the omission in the present statute as a license to judicially devise a uniform time limitation for § 301 suits.

Accordingly, since no federal provision governs, we hold that the timeliness of a § 301 suit, such as the

[6] In *McAllister* v. *Magnolia Petroleum Co.,* 357 U. S. 221, this Court held that, "where an action for unseaworthiness is combined with an action under the Jones Act a court cannot apply to the former a shorter period of limitations than Congress has prescribed for the latter." 357 U. S., at 224. The *McAllister* case represents no departure from the tradition discussed in the text. The Court's decision rested on the peculiar configuration of the federal maritime remedies. A seaman suing for both unseaworthiness and Jones Act negligence must do so in a single proceeding. *Baltimore S. S. Co.* v. *Phillips,* 274 U. S. 316. The Court had no occasion in *McAllister* to consider whether a state period longer than that provided in the Jones Act could be applied. 357 U. S., at 227 (BRENNAN, J., concurring).

present one, is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations.[7] This leaves two subsidiary questions to be decided. Which of Indiana's limitations provisions governs?[8] Does any tolling principle preserve the timeliness of this action?

The union argues that if the timeliness of this action is to be determined by reference to Indiana statutes, federal law precludes reference to the Indiana six-year provision governing contracts not in writing. Reference must be made instead, it is urged, to the Indiana 20-year provision governing written contracts. Burns' Ind. Stat. Ann. (1946 Repl.) § 2–602. This contention rests on the view that under federal law this § 301 suit must be re-

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[7] The present suit is essentially an action for damages caused by an alleged breach of an employer's obligation embodied in a collective bargaining agreement. Such an action closely resembles an action for breach of contract cognizable at common law. Whether other § 301 suits different from the present one might call for the application of other rules on timeliness, we are not required to decide, and we indicate no view whatsoever on that question. See, *e. g.*, *Holmberg* v. *Armbrecht*, 327 U. S. 392; *Moviecolor Limited* v. *Eastman Kodak Co.*, 288 F. 2d 80 (C. A. 2d Cir.); 2 Moore Federal Practice 3.07 [1]–[3], at 740–764 (2d ed. 1964); Hill, State Procedural Law in Federal Nondiversity Litigation, 69 Harv. L. Rev. 66, 111–114.

[8] The record indicates that Indiana is both the forum State and the State in which all operative events occurred. Neither party has suggested that the limitations provision of another State is relevant. There is therefore no occasion to consider whether such a choice of law should be made in accord with the principle of *Klaxon Co.* v. *Stentor Mfg. Co.*, 313 U. S. 487, or by operation of a different federal conflict of laws rule. See *Richards* v. *United States*, 369 U. S. 1; *De Sylva* v. *Ballentine*, 351 U. S. 570; *Vanston Bondholders Protective Committee* v. *Green*, 329 U. S. 156; *McKenzie* v. *Irving Trust Co.*, 323 U. S. 365; *D'Oench, Duhme & Co.* v. *Federal Deposit Ins. Corp.*, 315 U. S. 447. See also discussion in Hart and Wechsler, The Federal Courts and the Federal System, 696 *et seq.*

garded as exclusively bottomed upon the written collective bargaining agreement. We agree that the characterization of this action for the purpose of selecting the appropriate state limitations provision is ultimately a question of federal law. *Textile Workers* v. *Lincoln Mills, supra; McClaine* v. *Rankin, supra.* But there is no reason to reject the characterization that state law would impose unless that characterization is unreasonable or otherwise inconsistent with national labor policy. Cf. *Reconstruction Finance Corp.* v. *Beaver County,* 328 U. S. 204, 210; *De Sylva* v. *Ballentine,* 351 U. S. 570, 580–582.

Applying this principle, we cannot agree that federal law requires that this action be regarded as exclusively based upon a written contract. For purposes of § 301 jurisdiction, we have rejected the view that a suit such as this is based solely upon the separate hiring contracts, frequently oral, between the employer and each employee. *Smith* v. *Evening News, supra.* It does not follow, however, that the separate contracts of employment may not be taken into account in characterizing the nature of a specific § 301 suit for the purpose of selecting the appropriate state limitations provision. Indeed, as the present case indicates, consideration of the separate contracts for that purpose is entirely acceptable. The petitioner seeks damages based upon an alleged breach of the vaction pay clause in a written collective bargaining agreement. Proof of the breach and of the measure of damages, however, both depend upon proof of the existence and duration of separate employment contracts between the employer and each of the aggrieved employees. Hence, this § 301 suit may fairly be characterized as one not exclusively based upon a written contract.

Moreover, the characterization that Indiana law imposes upon this action does not lead to any conflict with federal labor policy. Indeed, to the extent that a pol-

icy is manifest in the Labor Management Relations Act, it supports acceptance of the characterization adopted here. The six-months' provision governing unfair labor practice proceedings, 61 Stat. 146, 29 U. S. C. § 160 (b) suggests that relatively rapid disposition of labor disputes is a goal of federal labor law. Since state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements, their applicability to § 301 actions comports with that goal. There may, of course, be § 301 actions that can only be characterized fairly as based exclusively upon a written agreement. But since many § 301 actions for wages or other individual benefits will concern employment contracts of the sort involved here, there is no reason to inhibit the achievement of an identifiable goal of labor policy by precluding application of the generally shorter limitations provisions.[9]

Accordingly, we accept the District Court's application of the six-year Indiana statute of limitations to this action. Cf. *Bernhardt* v. *Polygraphic Co.*, 350 U. S. 198, 204–205; *Steele* v. *General Mills*, 329 U. S. 433, 438. Thus, since this federal lawsuit was not filed until almost seven years after the cause of action accrued, the cause is barred by the six-year statute unless that statute was

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[9] Other questions would be raised if this case presented a state law characterization of a § 301 suit that reasonably described the nature of the cause of action, but required application of an unusually short or long limitations period. See, *e. g.*, N. M. Stat., 1953, § 59–3–4 (an action for wages "must be commenced within sixty [60] days from the date of discharge. . . ."). See *Campbell* v. *Haverhill*, 155 U. S. 610, 615; *Caldwell* v. *Alabama Dry Dock & Shipbuilding Co.*, 161 F. 2d 83 (C. A. 5th Cir.); Mishkin, The Variousness of "Federal Law": Competence and Discretion in the Choice of National and State Rules for Decision, 105 U. Pa. L. Rev. 797, 805–806.

somehow tolled by reason of the particularized circumstances of this case.[10]

The contention that some tolling principle saves the life of this action was raised for the first time in this Court. In any event, we find the contention without merit. In *Burnett* v. *New York Central R. Co.*, 380 U. S. 424, we held that the bringing of a timely action under the Federal Employers' Liability Act in a state court, even though venue was improper, served to toll the statute of limitations contained in that Act. The primary underpinning of *Burnett*, however, is wholly lacking here. As the Court noted in that case, a tolling principle was necessary to implement the national policy of a uniform time bar clearly expressed by Congress when it enacted the FELA limitations provision. 380 U. S., at 434. Section 301 of the Labor Management Relations Act establishes no such policy of uniformity expressed in a national limitations provision. Moreover, unlike the plaintiff in *Burnett* who could no longer bring a timely federal action after the state court dismissed his complaint, the union here had a full three years to bring this lawsuit in federal court after the dismissal of the state court action.[11] Under these circumstances, we have no difficulty in concluding that this cause of action expired in June 1963, six years after it arose.

Affirmed.

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[10] Neither party has suggested that the cause of action "accrued" on any date other than June 1, 1957, when the company terminated the employees' jobs. Cf. *Rawlings* v. *Ray*, 312 U. S. 96; *Cope* v. *Anderson*, 331 U. S. 461; *Moviecolor Limited* v. *Eastman Kodak Co.*, 288 F. 2d 80, 83 (C. A. 2d Cir.).

[11] It should be noted also that Indiana has a saving statute, Burns' Ind. Ann. Stat. 1933, § 2–608, but the union has never contended that it preserves the timeliness of this suit.

SUPREME COURT OF THE UNITED STATES

No. 387.—October Term, 1965.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Petitioner, *v.* Hoosier Cardinal Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March 24, 1966.]

Mr. Justice White, with whom Mr. Justice Douglas and Mr. Justice Brennan join, dissenting.

Certain principles are undisputed in this case. The period of limitations for § 301 suits is to be determined by federal law; and, since Congress has made no express provision for any time limitation, this Court must fashion the governing rule. By adopting the statutes of the several States, the Court creates 50 or more different statutes of limitations[1] rather than fashioning a uniform rule after consideration of relevant federal and state statutes.

The Court justifies its decision in part by reliance on cases decided under the Rules of Decision Act, 28 U. S. C. § 1652 (1964 ed.), which interpreted "the silence of Congress . . . to mean that it is federal policy to adopt the local law of limitation." *Holmberg* v. *Armbrecht*, 327 U. S. 392, 395; see, *e. g.*, *Chattanooga Foundry* v. *Atlanta*, 203 U. S. 390, 397; *Campbell* v. *Haverhill*, 155 U. S. 610;

[1] The Court's approach adopts (and thereby creates as federal law) at least one limitations statute for each State and Territory. In many States it adopts a multitude of limitations provisions, each applicable to a particular type of § 301 suit. The Court's opinion suggests, for example, that had the present suit been "exclusively based upon a written contract," *ante*, at p. 10, the Indiana 20-year, rather than the six-year, statute would have governed.

McCluny, v. *Silliman*, 3 Pet. 270, 277. But the cases also establish that the silence of Congress is not to be read as automatically putting an imprimatur on state law. Rather, state law is applied only because it supplements and fulfills federal policy, and the ultimate question is what federal policy requires. See *Board of County Comm'rs* v. *United States*, 308 U. S. 343, 350–352; *Holmberg* v. *Armbrecht*, 327 U. S. 392, 394–395; *Association of Westinghouse Salaried Employees* v. *Westinghouse Corp.*, 348 U. S. 437, 463 (Reed, concurring).

More specifically, it is quite clear that with respect to § 301 suits congressional silence extends not just to the question of limitations but encompasses the entirety of the governing legal principles. Rather than inferring from congressional silence that state law was to govern, *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, held that the federal courts were to "fashion from the policy of our national labor laws" general federal law applicable to suits on collective bargaining agreements. *Id.*, at 456. Although *Lincoln Mills* recognized that "state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy," *id.*, at 457, it did not intimate in any way that federal policy would be furthered by the adoption of 50 different state rules. To the contrary, subsequent decisions have recognized that "[c]omprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*" and that, "[m]ore important, the subject matter of § 301 (a) 'is peculiarly one that calls for uniform law.'" *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95, 103. There is, therefore, no sound basis for saying that Congress by its silence on the limitations matter intended the state laws to apply or for adopting diverse state laws simply because of a reluctance to supply what Congress omitted. The courts *are* expected to develop

the law of labor contracts, and this case represents only another task in this process.

The Court reasons, however, that to devise a uniform time limitation would be too "bald a form of judicial innovation." *Ante*, at p. 5. Cases defining a need for uniformity in § 301 suits are said to be limited to matters concerning which the possible application of varying systems of law " 'would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.' " *Ante*, at pp. 5–6. Since, according to the majority, the lack of a uniform statute of limitations would generally not have that effect,[2] the Court concludes that although such a uniform provision "might well constitute a desirable statutory addition, there is no justification for the drastic sort of judicial legislation that is urged upon us." *Ante*, at pp. 6–7.

The Court is undoubtedly correct in stating that a uniform limitations period would be desirable. Suppose, for example, that the collective bargaining contract in dispute was one made in Detroit for a multi-state unit of truckdrivers and that, as is true in this case, 100 of the

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[2] However, limitations questions will have an impact on the negotiation and administration of the collective agreement in many instances—for example, if the parties decide to limit by contract the period for bringing suit. The laws of the several States vary with respect to the enforceability of such contractual limitation periods, particularly when it is asserted that the agreed period is unreasonable, see Williston on Contracts § 183, at 711, n. 10 (Jaeger 3d ed. 1957); Note, 63 Harv. L. Rev. 1177, 1181–1182 (1950). It may be assumed that, under the test advanced by the majority, uniform federal law will be fashioned to determine their validity, just as, at least in some circumstances, federal law will determine when the cause of action arose, see *Cope* v. *Anderson*, 331 U. S. 461; *Rawlings* v. *Ray*, 312 U. S. 96, and whether the running of limitations was tolled by fraudulent concealment, see *Holmberg* v. *Armbrecht*, 327 U. S. 392; *Moviecolor Limited* v. *Eastman Kodak Co.*, 288 F. 2d 80 (C. A. 2d Cir. 1961).

covered employees were discharged without payment of accumulated vacation pay. Suppose further that some of the employees were hired in Chicago and discharged in Indiana while others were hired in St. Louis, Cleveland, and Terre Haute and were discharged in Illinois, Michigan, and Iowa (in whatever combinations are preferred). Suppose, finally, that some sue in Indiana, some in other States, some in federal court, and some in state court. Simple justice dictates in such a situation that the right of employees in different States to assert their federal claim should be equally available. Clearly there is no sense or justice in referring to 50 or more different statutes of limitations so that one employee may be barred after one year while another employee may sue any time within six years. Nor is there any reason why an employer operating under the contract in one State should be bothered with stale claims already barred as against other employers in other States.

Moreover, the Court's decision creates unnecessary complexities and opportunities for vexatious litigation, some of which are reflected in the Court's opinion. Thus the Court notes that in a situation involving multi-state contacts, such as the example given above, a federal court hearing the case would be required to decide whether to apply a federal, or the forum State's, conflict of laws rules to select the State of governing law. If this Court ultimately holds that a federal conflicts rule is to govern in federal court suits, the additional question will be presented of whether the federal conflicts rule must also be applied by state courts or whether they may continue to apply their own conflicts rule. Whatever conflict of laws rule, state or federal, is selected, there will remain the difficult task of applying that rule to find the State whose limitations statute is to control. In cases not involving multi-state contacts, the court may have to choose between two or more state statutes;

here the choice is between the limitations period for suits on written contracts and the period for suits on oral contracts. Under today's decision, this choice is to be governed by the State's characterization of the federal action (or a federal court's Delphic opinion of what that characterization would be), "unless that characterization is unreasonable or otherwise inconsistent with national labor policy." *Ante*, at p. 10. The governing state limitations statute, having finally been determined, is to be applied unless the period is "unusually short or long."[3] *Ante*, at p. 10, n. 9. The problems we have indicated are merely illustrative of the complex questions that must be decided under the Court's approach before it can be determined which of several competing state statutes is to be applied and whether such application is reasonable when tested by the federal labor policy; undoubtedly the fertile imagination of counsel will conceive additional intricacies. The desirability of a single, uniform, federal statute to further justice and to avoid such litigation creating complexities was of course recognized by Congress in passing the statutes, to which the majority refers, that overruled in particular areas past refusals of this Court to fashion such a uniform rule.

The case for the Court's decision thus ultimately comes down to the proposition that fashioning a uniform federal statute would involve too bald an exercise of judicial innovation. This is an argument I have difficulty in fathoming. Courts have not always been reluctant to "create" statutes of limitations, the common-law doctrine of prescription by which judgments are presumed to have been paid after the lapse of 20 years, see *Gaines* v. *Miller*, 111 U. S. 395, 399; *McElmoyle* v. *Cohen*, 13

[3] Unfortunately the Court provides no enlightenment concerning where we are to look for a limitations period should the state statute be held unreasonable. Perhaps in extremis even the Court's approach will require the kind of innovation it now rejects.

Pet. 312, 327, being just one example. In equity they have applied the doctrine of laches, see *Holmberg* v. *Armbrecht*, 327 U. S. 392. But here there is no dispute concerning whether a statute of limitations is to be fashioned—the choice is between one statute or 50. If the Court is to develop the substantive law of labor contracts, which it has undertaken to do with the blessing of Congress, it seems odd that the Court should balk at establishing a single limitations period, drawn from any of the sources available to it, including the relevant federal and state statutes. I undertake no such canvass here,[4] but think the Court should do so. I therefore dissent.

[4] Nor do I intimate any opinion concerning the tolling question mooted in the Court's opinion.